

**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**

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**REPORT AND ORDER**

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**Issue Date:** December 21, 2016

**Effective Date:** January 20, 2017

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Program and File Associated Tariff )

**APPEARANCES**

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**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

# REPORT AND ORDER

## I. Procedural History

On April 27, 2016, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) filed an application with the Missouri Public Service Commission (“Commission”) for a certificate of convenience and necessity (“CCN”) authorizing it to construct, install, own, operate, maintain and otherwise control and manage various small solar generation facilities at different locations within its service territory as part of a pilot program.

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Industrial Energy Consumers; United for Missouri, Inc.; Missouri Department of Economic Development – Division of Energy (“Division of Energy”); Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”)<sup>1</sup>; Brightergy, LLC; and Walmart Stores, Inc.<sup>2</sup> At the unopposed request of the Office of the Public Counsel (“Public Counsel”), the Commission held an off-the-record prehearing conference and established a procedural schedule.

On August 31, 2016, Ameren Missouri; Commission Staff; Division of Energy; Renew Missouri; and United for Missouri, Inc. signed and filed a *Non-Unanimous Stipulation and Agreement* (“Stipulation”) in which those signatory parties reached agreement on all issues related to the pilot program, including specific site selection criteria, review of site information, a \$10 million cap on Ameren Missouri’s capital investment, and

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<sup>1</sup> Intervention was granted to Earth Island Institute d/b/a Renew Missouri, but on December 6, 2016, that party filed notice that its name had been changed to Renew Missouri Advocates d/b/a Renew Missouri.

<sup>2</sup> Missouri Industrial Energy Consumers and United for Missouri, Inc. are parties to this matter, but they did not submit a statement of position on the disputed issues or briefs and asked to be excused from the hearing, so they will not be discussed further.

detailed reporting requirements. Public Counsel objected to the Stipulation, so it becomes a joint position statement of those parties.<sup>3</sup> No other party objected to the Stipulation.

The Commission held an evidentiary hearing on October 17, 2016.<sup>4</sup> During the evidentiary hearing, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Sufficiency of the application regarding filing requirements
  - a. Do 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?
  - b. Does the evidence demonstrate the company has provided the information required to comply with the Commission's rules at 4 CSR 240-3.105?
  - c. Does the evidence show that good cause exists to support a waiver of the Commission's rules at 4 CSR-3.105?
2. Criteria for granting a CCN

Does the evidence establish 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?
3. Termination of pilot program

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

Final post-hearing briefs were filed on November 18, 2016, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record.<sup>5</sup>

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<sup>3</sup> Commission rule 4 CSR 240-2.115(2)(D).

<sup>4</sup> Transcript, Vols. 1-2. The Commission admitted the testimony of 7 witnesses and 16 exhibits into evidence during the evidentiary hearing.

<sup>5</sup> "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Union Electric Company d/b/a Ameren Missouri is a subsidiary of Ameren Corporation, a public utility holding company.<sup>6</sup>

2. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>7</sup> Staff participated in this proceeding.

3. The Office of the Public Counsel is a party to this case pursuant to Section 386.710(2), RSMo<sup>8</sup>, and by Commission Rule 4 CSR 240-2.010(10).

4. In the Solar Partnership Pilot program (the “pilot program”), Ameren Missouri would own, operate, and maintain photovoltaic solar equipment on a customer’s premises under a long-term lease agreement. Ameren Missouri would retain and own all electricity and associated renewable benefits from the facility. Effectively, each solar installation would constitute a small Ameren Missouri generating unit interconnected to Ameren Missouri's electric distribution system.<sup>9</sup>

5. The pilot program involves distributed generation, which is electricity generated by one of a variety of small, grid-connected devices, which can be located

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<sup>6</sup> Ex. 2, Barbieri Direct, p. 1.

<sup>7</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>8</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2000 and subsequently revised or supplemented.

<sup>9</sup> Ex. 1, Harding Direct, p. 2.

throughout the company's service territory at the distribution level as opposed to the transmission level. Distributed generation will play an increasingly important role in Ameren Missouri's electrical system and has benefits for the larger electric grid.<sup>10</sup>

6. Solar energy provides a zero-emissions generation alternative and can spur economic development. Increased development of solar energy generation in Missouri is consistent with the overall recommendation in the Missouri Comprehensive State Energy Plan to diversify the state's energy portfolio.<sup>11</sup> Solar energy generation will be more important and play an increasing role in Ameren Missouri's energy production in the future.<sup>12</sup>

7. All Ameren Missouri non-residential electric customers in good standing may participate in the pilot program if they have the legal authority to enter into a contractual agreement assigning rights to the company necessary to allow production of electricity on the customer's premises using photovoltaic solar equipment as a renewable resource. The pilot program is available throughout the company's Missouri electric service area not in a flood plain, as long as the distribution facilities of Ameren Missouri are of adequate capacity and configuration and have appropriate phase and suitable voltage adjacent to the site served. The site must be able to support a facility with a minimum of 100 kW-DC (kilowatts measured in direct current) of nameplate capacity.<sup>13</sup>

8. Ameren Missouri anticipates installing three to five facilities through the pilot program, each in the range of between 100 kilowatts to 2 megawatts.<sup>14</sup> Ameren Missouri will spend up to \$2.20/watt-DC on each installation made under the pilot program towards

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<sup>10</sup> Ex. 2, Barbieri Direct, p. 6.

<sup>11</sup> Ex. 250, Hyman Rebuttal, p. 3; Transcript, Vol. 1, p. 155.

<sup>12</sup> Ex. 2, Barbieri Direct, p. 2-4; Transcript, Vol. 1, p. 127.

<sup>13</sup> Ex. 1, Harding Direct, p. 2; Stipulation, Appendix A.

<sup>14</sup> Transcript, Vol. 1, p. 75.

the construction and interconnection of the solar generation equipment at qualifying customer sites. Any amount exceeding the \$2.20/watt-DC will be paid by the participating customer as a contribution in aid of construction pursuant to the terms of the lease agreement the customer will enter into with Ameren Missouri for the installation. Ameren Missouri's total capital investment in the pilot program is capped at \$10 million.<sup>15</sup>

9. The lease with a participating customer will have a term of 25 years. At the end of the 25-year term, the customer may purchase the facility, renew the lease, or have the facility removed from the property.<sup>16</sup> Ameren Missouri will comply with any legal requirements before exercising any of those options.<sup>17</sup>

10. Ameren Missouri will retain all solar renewable energy credits generated from the facilities in the pilot program. In addition, participating customers will not receive a bill credit, lease payment, or other forms of compensation for the use of their property.<sup>18</sup> For these reasons, the pilot program would not fit the needs of every commercial and industrial customer.<sup>19</sup>

11. Ameren Missouri does not require additional generation capacity or energy production to meet the needs of its native load at this time. The company can comply with the solar energy portfolio requirements in the Missouri Renewable Energy Standard ("RES") law<sup>20</sup> until approximately 2024 without building facilities under this pilot program. However, renewable energy credits from the pilot program facilities can be used to satisfy

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<sup>15</sup> Ex. 1, Harding Direct, p. 2; Stipulation, p. 2.

<sup>16</sup> Ex. 1, Harding Direct, p. 2, 4.

<sup>17</sup> Transcript, Vol. 1, p. 77.

<sup>18</sup> Ex. 1, Harding Direct, p. 4; Ex. 250 Hyman Rebuttal, p. 4.

<sup>19</sup> Transcript, Vol. 1, p. 150.

<sup>20</sup> Sections 393.1025 and 393.1030, RSMo (Supp. 2013).



other general RES requirements in 2018-2019.<sup>21</sup> The RES portfolio requirements are minimum thresholds for renewable energy development, not caps.<sup>22</sup>

12. Ameren Missouri will be spending approximately \$1 billion in capital over the next 10-12 years to meet the Missouri RES requirements. The information the company learns from the pilot program regarding small-scale distributed solar generation will help it spend those funds wisely and efficiently.<sup>23</sup>

13. The reasons that Ameren Missouri is seeking approval of the pilot program are to investigate, develop, and understand the requirements necessary to achieve appropriate contract terms and conditions and to learn about siting, operating, and maintaining utility-owned electrical generation facilities on property owned and controlled by its customers.<sup>24</sup> Ameren Missouri currently lacks any real experience with the type of facilities proposed in the pilot program.<sup>25</sup>

14. Through information acquired in the pilot program, Ameren Missouri expects to gain an understanding of how distributed generation functions on an electrical grid designed primarily for centralized generation and gain experience in dealing with facilities placed on customer premises.<sup>26</sup>

15. The new information that Ameren Missouri expects to learn from the pilot program includes determining 1) whether multiple sites are cost-effective; 2) the benefits of locating generation closer to load; 3) the benefit of dispersing generation locations to minimize the impacts of cloud cover; and 4) the impact of power surges and intermittency.<sup>27</sup>

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<sup>21</sup> Ex. 3, Barbieri Surrebuttal, p. 2.

<sup>22</sup> Ex. 251, Hyman Surrebuttal, p. 5.

<sup>23</sup> Transcript, Vol. 1, p. 84.

<sup>24</sup> Ex. 3, Barbieri Surrebuttal, p. 2.

<sup>25</sup> Ex. 2, Barbieri Direct, p. 5-6; Transcript, Vol. 1, p. 129.

<sup>26</sup> Ex. 2, Barbieri Direct, p. 7.

<sup>27</sup> Transcript, Vol. 1, p. 82.

16. The annual impact to residential customers of the \$10 million in capital expenditures for the pilot program would be approximately 42 cents per customer.<sup>28</sup>

17. While Ameren Missouri can learn from studying the programs of other utilities, some information, such as working with its customers, requires direct experience for Ameren Missouri to acquire the information it seeks.<sup>29</sup> Modeling solar generation using simulated runs produces only speculative results.<sup>30</sup> Conducting a feasibility study before facility locations have been determined would be difficult due to the intermittency of solar.<sup>31</sup> Gaining experience concerning distributed generation on its own electrical system would be beneficial for Ameren Missouri.<sup>32</sup>

18. Predictions that project costs would decline substantially if Ameren Missouri delayed the pilot program until a future time are unreliable. The reduction in 2020 of the federal Business Energy Investment Tax Credit would increase total project costs if the pilot program is delayed, resulting in a higher revenue requirement burden on ratepayers.<sup>33</sup>

19. Ameren Missouri has been approached by several business entities that are interested in participating in the pilot program in order to demonstrate their overall support for sustainability efforts. These entities are willing to host a utility-owned solar generation facility on their own property without receiving a lease payment. Currently, no specific locations for the pilot program facilities have been determined.<sup>34</sup>

20. The process for verification of specific site selection criteria agreed to by the signatories to the Stipulation requires Ameren Missouri to file the information required by

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<sup>28</sup> Transcript, Vol. 1, p. 80.

<sup>29</sup> Ex. 3, Barbieri Surrebuttal, p. 3.

<sup>30</sup> Transcript, Vol. 1, p. 63.

<sup>31</sup> Transcript, Vol. 1, p. 112-113.

<sup>32</sup> Transcript, Vol. 1, p. 140.

<sup>33</sup> Ex. 251, Hyman Surrebuttal, p. 8; Transcript, Vol 1, p. 62.

<sup>34</sup> Ex. 3, Barbieri Surrebuttal, p. 4, 6.

Commission rule 4 CSR 240-3.105(B) and documentation demonstrating site suitability in the docket of this case. Signatory parties will review this information, and Staff will file a report stating whether the selected site meets the criteria. Any disputes will be referred to the Commission for resolution, but construction on a particular site may not begin before completion of the verification process set forth in Appendix A of the Stipulation.<sup>35</sup>

21. Ameren Missouri is required under the Stipulation to file regular reports in this case describing lessons learned, such as the benefits and challenges of solar generation located on customer property; the impact of distributed generation on the company's electrical grid; and testing how customer interest in the program is affected by sharing of investment, contract terms, and offering lease payments, bill credits or other forms of compensation.<sup>36</sup>

22. Ameren Missouri was not able to identify specific sites for the solar facilities and enter into contracts with those property owners conditioned upon the Commission subsequently granting a CCN for that particular location. Property owners are unlikely to expend the considerable time, energy, and money required to negotiate a contract if approval for the project may be denied later after a prolonged hearing process at the Commission. Property owners will be much more likely to participate in the pilot program if the Commission's prior approval of a blanket CCN provides a high degree of certainty that the project will be able to move forward upon satisfaction of the conditions in the Stipulation.<sup>37</sup>

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<sup>35</sup> Stipulation, p. 2 and Appendix A.

<sup>36</sup> Stipulation, p. 3 and Appendix B.

<sup>37</sup> Transcript, Vol. 1, p. 102-106.

23. Since specific site locations have not been identified, Ameren Missouri has not yet filed with the Commission all of the usual information related to a CCN application under Section 393.170, RSMo and Commission rule 4 CSR 240-3.105(1)(B).<sup>38</sup>

24. No party disputes that Ameren Missouri is qualified to provide the solar generation service described in its application or that Ameren Missouri has the financial ability to build the proposed solar facilities.<sup>39</sup>

### **III. Conclusions of Law and Discussion**

Ameren Missouri is an “electrical corporation”<sup>40</sup> and “public utility”<sup>41</sup> owning, operating, controlling or managing “electric plant”<sup>42</sup>. The Commission’s jurisdiction includes the authority to approve the pilot program when necessary or convenient for the public service, including the authority to impose reasonable conditions, as stated in Section 393.170, RSMo.<sup>43</sup> Since Ameren Missouri brought the application, it bears the burden of

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<sup>38</sup> Ex. 200, Burdge Rebuttal, p. 8; Ex. 3, Barbieri Surrebuttal, p. 6; Ex. 101, Eubanks Rebuttal, p. 4.

<sup>39</sup> Ex. 201, Burdge Surrebuttal, p. 4; Ex. 2, Barbieri Direct, p. 9.

<sup>40</sup> Section 386.020(15), RSMo.

<sup>41</sup> Section 386.020(43), RSMo.

<sup>42</sup> Section 386.020(14), RSMo.

<sup>43</sup> Section 393.170 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)

proof.<sup>44</sup> The burden of proof is the preponderance of the evidence standard.<sup>45</sup> In order to meet this standard, Ameren Missouri must convince the Commission it is “more likely than not” that its allegations are true.<sup>46</sup>

### **A. Sufficiency of the application regarding filing requirements**

Section 393.170, RSMo, imposes three requirements that are relevant to Ameren Missouri’s application: 1) the company must obtain the permission and approval of the Commission before beginning construction; 2) the company must file a verified statement with the Commission showing that it has received the consent of municipal authorities; and 3) the company must comply with any reasonable and necessary conditions imposed by the Commission. Commission rule 4 CSR 240-3.105<sup>47</sup> requires that an applicant for a CCN

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<sup>44</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>45</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

<sup>46</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>47</sup> Commission rule 4 CSR 240-3.105 states:

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications by an electric utility for a certificate of convenience and necessity shall include:

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- (B) If the application is for electrical transmission lines, gas transmission lines or electrical production facilities-
  1. A description of the route of construction and a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks or any underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;
  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 and a date when it will be furnished; and
  3. Plans for financing;
- (C) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect;
- (D) When approval of the affected governmental bodies is required, evidence must be provided as follows:
  1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and
  2. A certified copy of the required approval of other governmental agencies; and

must also provide certain information, including 1) a list of any electric/telephone/railroad/gas lines that may be crossed; 2) plans, specifications and costs of the construction project; 3) financing plans; and 4) evidence of consents from municipal authorities, where applicable. If any of these items are unavailable at the time the application is filed, they must be furnished prior to the granting of the authority sought. The Commission may waive the filing requirements in the rule for good cause shown.<sup>48</sup>

Public Counsel asserts that the Commission must reject Ameren Missouri's application because it does not meet the requirements of the statute or the rule, in that the locations of the solar facilities have not yet been determined and Ameren Missouri has not yet provided all the information required. Public Counsel argues that the Commission cannot determine if the solar facilities are necessary or convenient for the public service when it does not know the specific facility locations, because without that information the Commission cannot evaluate the particular conditions, concerns, and issues for each electric plant. These deficiencies cannot be cured by the procedural provisions in the Stipulation, as these procedures have no basis in law and would minimize the Commission's statutory oversight. Public Counsel cites *StopAquila.Org v. Aquila, Inc.*<sup>49</sup> as support for its argument that Ameren Missouri must file a new application for a CCN for each solar facility.

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(E) The facts showing that the granting of the application is required by the public convenience and necessity.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

<sup>48</sup> Commission rule 4 CSR 240-3.015 incorporates the waiver provisions in rule 4 CSR 240-2.060(4) for Chapter 3 filing requirements.

<sup>49</sup> 180 S.W.3d 24 (Mo. App. 2005). This case held, *inter alia*, that Section 393.170.1, RSMo, requires an electric utility to obtain a certificate of convenience and necessity from the Commission before constructing an electrical generating facility within its service territory. That decision also declares that Section 393.170.3, RSMo, requires the Commission to determine contemporaneously with the application whether construction of the electrical generating facility is necessary or convenient for the public service.

The Commission concludes that Public Counsel's interpretation is overly restrictive and that, taken together, the terms contained in the Stipulation present a plan that meets the requirements of Section 393.170 and Commission rule 4 CSR 240-3.105. Ameren Missouri has either already provided the information required or will provide that information prior to constructing the proposed facilities. Appendix A of the Stipulation sets forth specific criteria for evaluating a potential site for a solar facility and a process for review and reporting by Staff and the other signatories. The Stipulation also provides that any disputes regarding whether a site meets these criteria will be referred to the Commission for resolution.

The Commission also finds that Public Counsel's reliance on certain language in *StopAquila.Org* is misplaced because Ameren Missouri's solar pilot program is distinguishable from the facts in *StopAquila.Org*, which concerned the placement of a natural gas-fired turbine electrical generating plant. This case is more similar to the facts of File No. EA-2011-0368<sup>50</sup> ("SmartGrid"), where Kansas City Power & Light Company sought a CCN to construct and operate multiple small solar energy electrical production facilities located on commercial and residential rooftops in the SmartGrid demonstration area in Kansas City. In its SmartGrid order, the Commission concluded that requiring the company to obtain a new CCN for each small solar production facility would be a waste of resources for both the utility and the Commission. The same reasoning applies to the present case.

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<sup>50</sup> *In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval of 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*, File No. EA-2011-0368, Order Granting Certificate of Convenience and Necessity, 20 Mo. P.S.C. 3d 565 (2011), EFIS No. 8.

With regard to the issue of whether a waiver of Commission rule 4 CSR 240-3.105 should be granted, the Commission notes that Ameren Missouri has not requested such a waiver. A waiver of Commission rule 4 CSR 240-3.105 is not necessary because the rule is satisfied when all the required information will be provided before construction of the proposed solar facilities. It is common for the Commission to impose conditions that must be subsequently satisfied when granting a CCN without requiring a waiver of the rule. Even if the rule requirements had not been satisfied, the Commission determines that good cause would exist to support a waiver. The pilot program is unique in that it proposes to build utility-owned electrical production facilities on customer property. This requires Ameren Missouri to work with host customers on an individual basis to determine optimum siting locations and conditions for the operation of those facilities. Requiring the company to complete all negotiations with host customers and finalize all engineering and construction plans before applying for a CCN would effectively kill the pilot program because potential partners would be unlikely to invest time and resources before Commission approval has been granted. These additional considerations, which are not present in utility-sited electrical production facility applications, demonstrate good cause for a waiver of the rule.

#### **B. Criteria for granting a CCN**

The next issue for determination is whether the evidence establishes that the pilot program for which Ameren Missouri is seeking a certificate of convenience and necessity is necessary or convenient for the public service. When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:



- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant's proposal must be economically feasible; and
- e) The service must promote the public interest.<sup>51</sup>

It is important to note that these factors have been developed and implemented by the Commission itself, not by the legislature or the courts, so the Commission is not bound to strictly follow past decisions where it is reasonable to deviate from those standards.

With regard to Ameren Missouri's qualifications and financial ability to provide the service, Ameren Missouri has provided competent and substantial evidence to support its claim. No party disputed these two factors, so the Commission concludes that Ameren Missouri has met its burden of proof demonstrating that it is qualified and has the financial ability to provide the service described in its application for a certificate of convenience and necessity.

#### Need for the Project

When determining whether the project is necessary or convenient for the public service, the "term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost".<sup>52</sup> Public Counsel states that Ameren Missouri has failed to provide sufficient evidence to establish that the costs of the pilot program are justified. Public Counsel argues that Ameren Missouri has not been able to quantify any benefits to ratepayers in proceeding with the pilot program, and

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<sup>51</sup> *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

<sup>52</sup> *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

the pilot program is not required for Ameren Missouri to meet its native load or comply with current RES standards.

Although all parties agree the pilot program is not required for regulatory compliance at this time, the program is needed to allow Ameren Missouri to gain knowledge and experience regarding deployment of solar generating resources on customer-owned property for the future. The company lacks experience with the kind of distributed solar generation to be constructed for this project, and modeling such generation on simulated runs only produces speculative results. Ameren Missouri will need additional solar generation in the future, and before making decisions at that time to incur such significant costs, the company must learn more about the types of solar generation and the impacts on the electrical grid. A small-scale, limited investment is a reasonable way to investigate and gain knowledge of distributed solar generation before expanding the scale and investment level of this service. In addition, the pilot program will promote diversification of generation resources, may result in reliability benefits similar to the reliability of micro grids, and will aid in RES compliance in the future. The Commission concludes that the pilot program is needed.

#### Economic Feasibility of the Project

Public Counsel states that Ameren Missouri has failed to provide sufficient evidence that the pilot program is economically feasible. The company has not performed any feasibility studies to determine the costs and benefits, and does not anticipate doing so until after the pilot program is operational.

The Commission has recently recognized that maximizing profit by purchasing the least-cost energy option may not be applicable in the situation of a pilot program where the

purpose of the program is not to provide the cheapest power to the utility's customers. In finding economic feasibility regarding the Greenwood pilot solar plant proposed by KCP&L Greater Missouri Operations Company ("GMO"), the Commission stated that:

[The pilot project's] purpose is to help GMO to develop more and cheaper solar power in the future. 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.<sup>53</sup>

The Commission concludes that the pilot program is economically feasible because it was designed to provide the company with important knowledge and experience while not burdening its customers with unnecessary costs. The evidence supports the conclusion that the benefits of these learning opportunities far outweigh the annual impact to customers of approximately 42 cents. While the immediate benefits to Ameren Missouri and its ratepayers are not easily quantifiable, in light of the need for additional solar generation in the future it is likely that those future cost savings will be substantial.

### Public Interest

Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body.<sup>54</sup> The public interest is a matter of policy to be determined by the Commission.<sup>55</sup> It is within the discretion of the Public Service Commission to determine when the evidence indicates the

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<sup>53</sup> *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 to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, Report and Order, p. 15, File No. EA-2015-0256, issued March 2, 2016, EFIS No. 84.

<sup>54</sup> *Fleshner v. Pepose Vision Institute, P.C.*, 304 S.W.3d 81, 96 (Mo. banc 2010).

<sup>55</sup> *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

public interest would be served.<sup>56</sup> Determining what is in the interest of the public is a balancing process.<sup>57</sup> In making such a determination, the total interests of the public served must be assessed.<sup>58</sup> This means that some of the public may suffer adverse consequences for the total public interest.<sup>59</sup> Individual rights are subservient to the rights of the public.<sup>60</sup> The “public interest” necessarily must include the interests of both the ratepaying public and the investing public.<sup>61</sup>

The *Tartan* case stated that the public interest determination “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.”<sup>62</sup> Since the Commission has concluded that Ameren Missouri has met all of the *Tartan* factors, by that standard Ameren Missouri has demonstrated that the pilot program promotes the public interest.

Besides the benefit of Ameren Missouri acquiring knowledge and experience in distributed solar generation, the public will similarly benefit. The Stipulation requires Ameren Missouri to report on what it learns, which will be available to the Commission, Staff, and other parties. This information will increase the understanding of the benefits and

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<sup>56</sup> *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597-598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

<sup>57</sup> *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

<sup>61</sup> The Missouri Supreme Court has previously held that the Commission must consider the interests of the investing public and that failure to do so would deny them a right important to the ownership of property. *State ex rel. City of St. Louis v. Public Service Com'n of Missouri*, 73 S.W.2d 393 (Mo. banc 1934).

<sup>62</sup> *In re Tartan Energy*, 3 Mo.P.S.C. 3d at 189.

costs of similar programs and will allow Staff and other groups to make more informed decisions in the future. Like GMO's customers in the GMO Greenwood case cited above, Ameren Missouri's customers also "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."<sup>63</sup> Ameren Missouri has presented sufficient evidence that the pilot program is necessary and convenient for the public service and should be approved.

### **C. Termination of pilot program**

Section 393.190, RSMo, states, in pertinent part, as follows:

1. 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. ... Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value. (emphasis added)

In his direct testimony at p. 4, Ameren Missouri witness Michael Harding stated:

Question: What happens to the assets at the end of the 25-year term?

Answer: At the end of the 25-year term, the customer may purchase the facility, renew the lease, or have the facility removed from the property.

Public Counsel states that Ameren Missouri's plan for the proposed facility at the end of 25 years is unlawful under Section 393.190 and should be rejected. Public Counsel argues that Ameren Missouri has provided no explanation about the process for seeking

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<sup>63</sup> Report and Order, File No. EA-2015-0256, p. 15.

Commission approval or commitments made to the customer. Offering the listed options to potential partners without making them aware that future treatment of the facilities is subject to Commission approval could be misleading and, without a plan in place, will create future problems.

The Commission concludes that the company's plan outlining the treatment of the proposed facilities at the end of 25 years is lawful under Section 393.190. Nothing in the application, Stipulation, or testimony relieves Ameren Missouri of its obligation to seek Commission approval if this situation arises, and Ameren Missouri agrees to comply with those requirements. Since there is no legal requirement that the Commission determine the treatment of the proposed facilities after the 25-year term at this point in time, and Ameren Missouri has agreed to comply when necessary to do so, Ameren Missouri's plan is lawful under Section 393.190, RSMo.

#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Ameren Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that the pilot program as described in its application for a certificate of convenience and necessity is necessary and convenient for the public service. Therefore, the Commission will grant the Ameren Missouri application, subject to the conditions and terms contained in the Stipulation. In granting the application, the Commission is not making any policy determinations regarding the preferred structure of distributed solar generation programs in the future.

**THE COMMISSION ORDERS THAT:**

1. Union Electric Company d/b/a Ameren Missouri's application for a certificate of convenience and necessity filed on April 27, 2016, is granted, subject to the terms and conditions of the *Non-Unanimous Stipulation and Agreement* filed on August 31, 2016. This Stipulation and Agreement is attached hereto as Attachment A and incorporated herein as if fully set forth. The signatory parties are ordered to comply with the terms of that Stipulation and Agreement.

2. This order shall become effective on January 20, 2017.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, and Coleman, CC., concur  
and certify compliance with the  
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 21<sup>st</sup> day of December, 2016.

**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.                                )  
EA-2016-0208

**NON-UNANIMOUS STIPULATION AND AGREEMENT**

Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or the “Company”), the Missouri Public Service Commission Staff (“Staff”), Missouri Department of Economic Development – Division of Energy, Earth Island Institute d/b/a Renew Missouri and United for Missouri, Inc. (collectively the “Signatories”) present this Non-Unanimous Stipulation and Agreement (“Stipulation”) to the Missouri Public Service Commission (“Commission”) for its approval.

**I.       BACKGROUND**

1.       On April 26, 2016, Ameren Missouri requested the Missouri Public Service Commission (“Commission”) issue a blanket Certificate of Convenience and Necessity (“CCN”) allowing the Company to partner with customers to construct and own distributed solar facilities located on those customers’ premises (the "Partnership Pilot"). The filing included direct testimony filed by William Barbieri and Michael Harding. The Signatories held multiple meetings to discuss the Partnership Pilot and have come to an agreement as set forth below.

**II.       SPECIFIC TERMS AND CONDITIONS**

2.       Complete Settlement of Case. As a result of extensive settlement discussions, the Signatories have agreed to the terms and conditions set forth below in full and final resolution of all issues in this case.

3.       Blanket Certificate of Convenience and Necessity (“CCN”). The Signatories agree the



Commission should grant a blanket CCN, authorizing Ameren Missouri to construct one or more Partnership Pilot facilities in Ameren Missouri's service territory, subject to the investment limitations on such facilities and other terms and conditions herein, which will allow construction at a given site upon completion of the process outlined in Appendix A.

4. Site Selection Criteria. Ameren Missouri will use the Minimum Application Conditions and Additional Considerations for Site Evaluation when identifying a site(s) for facilities to be constructed for this Partnership Pilot, as set forth in Appendix A to this Stipulation. If facilities under both this Partnership Pilot and the pilot that is the subject of File No. EA-2016-0207 are to be built, the Company will use best efforts to locate sites that can host facilities for both pilots.

5. Additional Site Information. As Ameren Missouri identifies locations, it will file the information required by Appendix A in this docket and the Signatories will review that information to verify that the site meets the agreed-upon criteria according to the process outlined in Appendix A. If there is a dispute regarding whether the site meets the agreed-upon criteria the dispute will be referred to the Commission for resolution.

6. Capital Investment Level. Ameren Missouri's capital investment in the Partnership Pilot is capped at \$10 million. Additionally, Ameren Missouri will spend no more than \$2.20/watt on each facility.<sup>1</sup> Participating partners are required to cover any costs in excess of \$2.20/watt on a facility located on their premises, but may cover more than their minimum required contribution. Contributions by participating partners shall be treated as a contribution in aid of construction.

7. Costs. Actual investment and others costs associated with facilities constructed and operated under this Partnership Pilot will be reviewed by parties to Ameren Missouri rate cases and may be challenged on the basis of imprudence, however, it is agreed that parties may not argue that the decision

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<sup>1</sup> The \$2.20/watt is based on the Direct Current ("DC") rating of the solar facility.

to construct a facility according to the terms of this agreement is imprudent. All investment (within the caps) in the Partnership Pilot facilities and other costs of the facilities, other than those found to be imprudent will be reflected in Ameren Missouri's revenue requirement in each rate case.

8. Construction. Construction on a particular site may not begin before completion of the verification process set forth in Appendix A.

9. Marketing. Marketing may begin after the approval of this Stipulation.

10. Reporting. Ameren Missouri will file reports with the Commission in this docket detailing lessons learned. Reports will be filed 18 months after each facility is constructed and every 36 months thereafter, until the last facility constructed as part of the Partnership Pilot is retired. The minimum requirements for what information will be included in these reports are set forth in Appendix B. The reports will be filed in this docket (EA-2016-0208); parties may file responses to these reports within 45 days.

### **III. GENERAL PROVISIONS**

11. This Stipulation is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this Stipulation, none of the Signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or revenue determination or cost allocation or revenue related methodology, and none of the Signatories shall be prejudiced or bound in any manner by the terms of this Stipulation (whether it is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Stipulation, except as otherwise expressly specified herein. Without limiting the foregoing, it is agreed that this Stipulation does not serve as a precedent for future solar facility programs.

12. This Stipulation has resulted from extensive negotiations, and the terms hereof are

interdependent. If the Commission does not unconditionally approve this Stipulation, or approves it with modifications or conditions to which a party objects, then this Stipulation is considered to be void and no Signatory will be bound by any of its provisions.

13. If the Commission does not unconditionally approve this Stipulation without modification, or approves it with modifications or conditions to which a party objects, and notwithstanding its provision that it shall become void, neither this Stipulation, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights any Signatory has for a decision in accordance with Section 536.080, RSMo 2000, or Article V, Section 18, of the Missouri Constitution, and the Signatories retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

14. This Stipulation contains the entire agreement of the Signatories concerning the issues addressed herein and resolves all issues in this case.

15. This Stipulation does not constitute a contract with the Commission. Acceptance of this Stipulation by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has. Thus, nothing in this Stipulation is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

/s/ James B. Lowery

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing has been e-mailed, this 31st day of August, 2016, to counsel for all parties of record.

/s/ James B. Lowery

## Appendix A – Site Documentation

Process for Signatory verification that the site(s) selected meets the specified criteria.

- A. Ameren Missouri files information required by 4 CSR 240-3.105(B) in docket EA-2016-0208. This filing will also include an assessment that the identified site meets the Minimum Application Conditions listed below as well as documentation regarding the Additional Considerations for Site Selection listed below.
- B. All parties will make best efforts to complete their review within 45 days but may take up to 90 days to review information.
- C. Ameren Missouri will schedule a conference call within 7 calendar days of the filing of the information to answer questions.
- D. Parties may issue data requests for additional information. The time to answer these data requests will be shortened to 7 calendar days, with 3 business to object or notify the issuer that additional time will be needed to provide the information requested.
- E. At end of 45/90 days, Staff will file a report in the CCN case that says they have verified that the site selected does (or does not) meet the agreed-upon criteria. Other parties may file a report at the same time, but are not required to do so.

### **Minimum Application Conditions to be met are as follows, in no particular order:**

- Non-Residential Customer
- Site is within the Ameren Missouri service territory
- Site can support a minimum of 100 kW capacity
- Customer is in good standing with Company
- Site provides a suitable location for solar (flat, minimal shading issues, accessible)
  - minimum of eighty-five percent (85%) of the solar resource is available to the solar photovoltaic system.
- Near sub-transmission, distribution lines, or substations (12kV - 69 kV)
  - Interconnection must be at sub-transmission or distribution level
  - Interconnection must not require significant capacity upgrades
  - Cost of interconnection must be included in Ameren Missouri's contribution cap
- Not in a flood plain

### **Additional Considerations for Site Evaluation, in no particular order:**

- Price of Bid
- Price of Interconnection Cost and Upgrades
- Amount Partner is willing to contribute to the project should the price exceed Ameren Missouri's contribution cap
- Type of installation (Ground Mount, Rooftop, Canopy)
- Creditworthiness of applicant

- History at location & likeliness to remain in control over life of solar facility
- Quality of site (risk of erosion, deterioration of structure, or quality of soil)
- Environmental Risk of site
- Existing security at Site location
- Safety risk at location
- Type of Facility: (Office, Educational, Industrial, Manufacturing, Retail, Religious, Data center, Warehouse, Healthcare, Military, Recreational, Other)
- Site Status: (Owned, Leased, Other)

## APPENDIX B

Each report filed pursuant to paragraph 10 shall include at a minimum: a discussion of knowledge gained of each Learning Opportunity, a discussion of progress towards answering each Key Question to Explore, and the results of and documentation of Planned Activities to Gain Insight.

### **Learning Opportunities:**

- Gain insight and knowledge about the unique benefits and challenges of distributed generation in general and, more specifically, benefits and challenges related to the deployment of Ameren Missouri-owned solar generation on properties owned by Ameren Missouri customers.
- Learn about distributed generation, how it impacts the Company's electrical grid and to test the level of customer interest in sharing in the investment necessary to install this type of renewable generation.
- Explore which types of customers are most interested in the program, and under what terms they would participate.
- Consider how offering a lease payment, bill credit, or other form of compensation to potential site hosts would influence future program participation and cost.
- Gain an understanding of how distributed generation functions on an electrical grid designed primarily for centralized generation, solar generation, as well as the impacts of facility placement on the grid (e.g., impacts on transformers, substations, and line losses) and the value to the grid of distributed generation.
- Ameren Missouri should also be able to determine if there are any specific financial benefits from this form of solar generation or if utility-scale central station generation will provide a more economic means of solar electrical supply.

### **Key Questions to Explore:**

- What types of customers expressed interest in the program? What program aspects did these different customers favor (e.g., PR, lease payments, other program terms)?
- Are customers willing to invest money into utility-owned renewable generation?
- Would a lease payment, bill credit, or other form of compensation to customers increase their likelihood to participate in the program?
- What levels and structures of host site compensation are offered by other IOUs? Are these offerings comparable to compensation provided to host sites by third-party solar project developers?
- How would various levels of compensation offered to host sites impact the levelized cost of energy from customer-sited solar facilities? How do these costs compare with those related to utility-scale solar?
- Does Ameren Missouri retaining ownership of the associated RECs impact customer desire for this program?
- What are customers' recommendations for future program enhancements?
- What contract terms are necessary in order to make this type of arrangement work?
- Can Ameren Missouri identify a system reliability benefit arising from the addition of these generation assets?



- Are there any distribution system challenges associated with the use of distributed generation?
- Are lease payments an important factor to gain customer participation?

**Planned Activities to Gain Insights:**

Ameren Missouri will conduct marketing surveys along with interviews of customers participating in the program (along with other potential participants) to learn first-hand their thoughts about the workings of the program. Routine follow-ups on the customers' perceptions of how the program is working and the benefits that the customers are experiencing will assist Ameren Missouri with potential future program design changes that may be necessary. Ameren Missouri will communicate periodically with prospective participants regarding alternative program designs to gauge potential additional interest.

Ameren Missouri will use the Division Directors responsible for the areas in which each generator is ultimately located under this pilot to track the operational benefits and challenges related to having the facilities on the distribution system (versus on the transmission system).

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 21<sup>st</sup> day of December 2016.



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**December 21, 2016**

**File/Case No. EA-2016-0208**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff**  
**Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.