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**

REPLY BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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COMES NOW the Office of Public Counsel ("OPC" or "Public Counsel") and presents its reply brief as follows:

I. Introduction

There is no proper basis in law or policy for the Public Service Commission ("Commission") to grant a Certificate of Convenience and Necessity ("CCN") for the project as proposed. Ameren Missouri's CCN application asks for permission the Commission cannot grant and fails to provide required information to meet its evidentiary burden. Nothing in the initial briefs of the proponents addresses these deficiencies. Instead, the proponents invite the Commission to ignore the clear direction from the Legislature and the Court of Appeals that a CCN is required for each generating facility. In this reply brief, Public Counsel reiterates the legal standards the Commission must apply and addresses the proponents' contrary arguments. Furthermore, Public Counsel responds to, and further comments on, the public policy issues embedded in the proposal put forward by Ameren Missouri. After considering the legal and policy issues presented, the Commission *must* deny Ameren Missouri's requested CCN.

II. Legal requirements

All Commission orders must be lawful and reasonable. *State* ex rel. *Mo Gas Pipeline, LLC v. Mo. PSC*, 366 S.W.3d 493, 495-96 (Mo. 2012); Section 386.510 RSMo. Because the Commission is a "creature of statute" having only the power granted by the Legislature, it may

only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable interpretation. *Public Serv. Comm'n v. Consol. Pub. Water Supply Dist. C-1*, 474 S.W.3d 643, 649 (Mo. App. W.D. 2015). Importantly, "[n]either convenience, expediency nor necessity" can support an act of the Commission that is not authorized by statute. *State* ex rel. *Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462 (Mo. 1923).

Here, Ameren requests a CCN under Section 393.170 RSMo (also known as the "CCN statute"). However, the particular facts and circumstances related to this application for a "blanket CCN" require examining additional legal standards including the applicant's evidentiary burden, Section 393.190 RSMo (related to the transfer and disposal of utility assets), and the Commission's regulations at 4 CSR 240-3.105. As discussed in Public Counsel's initial brief, each legal principle considered requires the Commission deny Ameren Missouri's requested CCN.

A. Evidentiary burden

In cases involving construction of new generating plant, the applicant bears the burden to prove the project is necessary or convenient for the public service. Section 393.170 RSMo. Meeting the evidentiary burden is foundational because a determination of the lawfulness of a Commission order granting a CCN "requires a concomitant determination of whether it was reasonable." *State* ex rel. *Ozark Electric Cooperative v. Public Service Comm'n.*, 527 S.W.2d 390, 392 (Mo. App. 1975). In order to meet its evidentiary burden, the applicant must offer competent and substantial evidence. Pertaining to the issuance of CCN's:

> If there is competent and substantial evidence on the whole record that the certificate of convenience and necessity awarded … [is] "necessary and convenient for the public service", then the Commission's order in granting the certificate …[is] both reasonable and lawful. If the opposite be true, then the order of the Commission granting the certificate of authority … [is] both unreasonable and unlawful.

Id. Without competent and substantial evidence showing the CCN is necessary and convenient for the public service, the Commission's order *cannot* be reasonable or lawful.

The undisputed evidence in this case shows Ameren Missouri does not need the proposed project to serve its customers or to comply with the RES requirements (Ex. 3, p 2). The evidence also shows that the proposed projects do not necessarily result in reduced carbon emissions (Ex. 200, p. 5). The proponents of the CCN dispute that the foregoing facts are dispositive, relying on the theory that the intent to pursue "learning opportunities" justifies expending 10 million dollars. Ameren Missouri suggests "[t]his pilot …provides learning and experience …making this distributed solar generation pilot an additional service which is an improvement justifying its cost" (Ameren Missouri Br., p. 4). Staff justifies its support of this project because Ameren Missouri will "use the opportunity of this pilot to … 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" (Staff Br., p. 6). Division of Energy ("DE") admits the lack of need but instead offers that "learning opportunities" are sufficient justification:

> 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.

(DE Br., p. 7).

Before addressing the proponent's theory in depth, statements contained in the foregoing excerpts by Staff and DE must be addressed. Staff mentions that this project will be a way to "test the level of customer interest in sharing in the investment" (Staff Br., p. 6). To dispel any possible misconception Staff may have, no "sharing" occurs between Ameren Missouri and its

ratepayers. The site owner pays everything above $2.20 per watt cap, if anything. Ameren Missouri intends that its ratepayers will pay for *everything else* through future rate increases. *See Non-Unanimous Stipulation and Agreement*, p. 3. The Company does not contribute any money it does not intend to recover in rates (with an additional earnings opportunity) and does not forgo any revenue from sales of electricity (as it would if the site owner installed the solar panels for its own end-use).

DE's assertion the project is "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" is meaningless (DE Br., p. 7). In *State* ex rel. *Byers Transp. Co. v. Public Service Comm'm*., the Court acknowledged that the CCN applicant offered testimony "he had received, almost daily, calls for service … but he was not specific as to who asked for the service, or why, or the volume" and held that "[g]eneral testimony to the effect that he received calls for service from people in the area, is not the kind of testimony required to prove necessity and convenience." *State* ex rel. *Byers Transp. Co. v. Public Service Comm'n*., 246 S.W.2d 825, 826 (Mo. App. 1952). In the present case, Ameren Missouri's general statements about customer demand are similarly insufficient to prove necessity and convenience.

In regards to the idea that "learning opportunities" provides sufficient justification for this $10 million project, this theory is offered in two parts. First, the "learning opportunities" and "questions to explore" listed in Appendix B to the *Non-unanimous Stipulation and Agreement* are purportedly sufficient to justify spending ten million dollars. Second, this proposal is a "pilot program" and is thus ostensibly subject to less rigorous scrutiny. Both aspects of the proponents' theory fail.

Ameren Missouri and Staff suggest the commitment to to provide the information listed in Appendix B *after* the project is built satisfies the obligation to demonstrate investigation of the "learning opportunities" justifies the project cost (Ameren Missouri Br., p. 3; Staff Br., p. 9). To be clear, the applicant must demonstrate this *before* the CCN can be granted. Appendix B demonstrates the applicant has not met its burden to show the project is "necessary or convenient for the public service" but instead requests permission to do so after the project is built. This is not permission the Commission has authority to grant.

Section 393.170 RSMo gives the Commission power to grant a CCN only after it "shall … determine that such construction … 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." *State* ex rel. *Intercon Gas, Inc. v. Pub. Serv. Comm'n.,* 848 S.W.2d 593, 597 (Mo. App. 1993). The Court's analysis did not end there; further explaining "[t]he safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers." *Id*. Based on the *Intercon* case, the Commission has clear metrics for determining when "such construction" is necessary or convenient. Either the construction is necessary for "safety and adequacy of facilities" or it is "an improvement justifying its cost." *Id*. Both metrics require competent and substantial evidence and in both cases the applicant bears the burden of proof. For example, to demonstrate the construction is necessary for safety and adequacy the applicant might offer evidence that it needs additional solar generation to comply with state regulations. In such a scenario, upon reviewing proper evidence no party could dispute the necessity of the project.

Under the alternative metric, the applicant must present evidence demonstrating the construction provides an additional service that is an "improvement justifying its cost." These are projects a utility can build if the economics make sense. Instead, Ameren Missouri and other proponents have created a list of information the Company will collect and file after the projects are built with no effort to measure or demonstrate *how* customers benefit or the required demonstration that the benefit received would *justify* the cost.

The second aspect of the proponents' theory is that this is a "pilot program." Denominating the proposal a "pilot program" does not relieve the applicant of its burden. A "pilot program" cannot be invoked whenever the proponent of new generation (or other infrastructure) fails to demonstrate the benefit to ratepayers from the project justifies the cost. Importantly, there is no separate statutory basis for permitting "pilot" generating facilities that do not meet the standards under Section 393.170 RSMo and *Intercon*. This application must be judged according to the standards described therein. Ameren Missouri's present proposal fails on either count.

Ameren Missouri failed to meet its evidentiary burden to show the proposed project would be an improvement justifying its cost. The Company's *Non-unanimous Stipulation and Agreement* and Appendix B demonstrate the Company (and other proponents) recognizes this deficiency. The undisputed evidence demonstrates overwhelmingly the current service is adequate and compliant with all regulations. The novel process in Appendix B and underlying theory offered by the proponents have no basis in law. The Commission must reject attempts to demonstrate speculative need that fail to demonstrate a benefit to ratepayers.

B. Section 393.170 RSMo

Section 393.170.3 RSMo. empowers the Commission to grant CCNs and provides the standard to be applied when evaluating an application, stating:

> [t]he commission shall have the power to grant the permission and approval … 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.

Thus, the Commission must determine the construction of the facility is necessary or convenient for the public service. This requires the applicant to provide certain information. The Court of Appeals has explained that "[b]y requiring public utilities to seek Commission approval *each time* they begin to construct a power plant, the legislature ensures that a broad range of issues, including county zoning, can be considered[.]" *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 37 (Mo. App. W.D. 2005). For *each* generating facility, the Commission must consider current conditions, concerns, and issues before granting specific authority to begin construction. Through Section 393.170 RSMo, the Legislature requires the Commission examine the contemporaneous facts and circumstances in order to prevent wasteful duplication of facilities and services and to review land-use considerations before each new generating plant is built.

Importantly, the Commission cannot act until the applicant provides certain information. The Court made clear that such '"specific authority' [is] required for the construction of an electric plant. *Id* at 34. Therefore, Ameren Missouri must seek permission for each of the solar generating facilities contemplated under its program as the Commission has no authority to grant a "blanket" CCN. This requirement that the Commission consider each generating facility makes sense given the privileges a CCN grants related to zoning. *See StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. 2005); *Union Electric Co. v. Saale*, 377 S.W.2d 427, 430 (Mo. 1964).

Ameren Missouri has not provided the information that would permit the Commission to make a determination of convenience and necessity after examining the contemporaneous facts and circumstances.

Proponents invite the Commission to ignore its obligations under Section 393.170 RSMo and the clear direction of *StopAquilla*. Ameren Missouri, Staff, and DE suggest the Commission is empowered to grant a "blanket CCN" because it did so in EA-2011-0368 (Ameren Br., p. 4; Staff Br., p. 13; DE Br., pp. 3-4). The proponents argue that approving a "blanket CCN" is necessary because requiring separate CCNs would be a "waste of resources" for the Commission. *Id*. They argue the "site selection" process in Appendix A is the preferred course. In any event, the proponents suggest, the Company will provide information and seek Commission approval once each site is selected. The proponents are wrong and the Commission should decline to follow their flawed analysis.

"As a creature of statute, the Commission only has the power granted to it by the Legislature and may only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable interpretation." *Public Serv. Comm'n v. Consol. Pub. Water Supply Dist. C-1*, 474 S.W.3d 643, 649 (Mo. App. 2015). Neither convenience, expediency nor necessity can support an act of the Commission that is not authorized by statute. *State* ex rel. *Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462 (Mo. 1923).

Because the Commission is a creature of statute, to the extent it may have exceeded its lawful authority in the past has no bearing on the present case. *See State* ex rel. *Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 54 (Mo. 1979). The *StopAquilla* Court was unequivocal: the legislature meant for utilities to seek Commission

approval *each time* they begin to construct a power plant so that a broad range of issues, including county zoning, can be considered.

Furthermore, it is clear that not all signatories understand the process they have agreed to support. In its brief, Staff represents "[b]efore any ground is broken, Ameren will have provided all required information to Commission and provided Staff and other parties with an opportunity for review, input, and *Commission determination.*" (Staff Br., p. 16) (emphasis added). Renew Missouri tells the Commission "[w]hile the sites have not yet been selected, the agreement provides that Ameren will seek the *approval of the Commission* before construction begins." (Renew Missouri Br., p 2) (emphasis added).

Staff and Renew Missouri's representations are incorrect. The *Non-unanimous Stipulation and Agreement* very clearly says:

> 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 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.

Examining Appendix A reveals that it is only the signatories who would participate in site verification, referring to this as the "[p]rocess for Signatory verification that the site(s) selected meets the specified criteria." (*See* Appendix A, p. 1). This limitation does not address the situation that, once a site is located, new persons will be interested in the location with each having questions, concerns, and perhaps objections to the construction of a solar generating facility next door. Under the terms of the *Non-unanimous Stipulation and Agreement*, the Commission would give its "blanket approval" now and only readdress the matter if there is a dispute among the signatories.

Appendix A representing a "site selection" process dispossesses the Commission of its regulatory oversight. The Commission should be aware that installing solar facilities is not an outcome universally desired. *Lake at Twelve Oaks Home Assn., Inc. v. Hausman,* 488 S.W.3d 190 (Mo. App. 2016) (discussing glare from solar panels impact on property values surrounding the installation); *Hague v. Trustees of Highlands of Chesterfield*, 431 S.W.3d 504 (Mo. App. 2014) (involving an action against a homeowners' association that did not allow installation of rooftop solar panels on a particular residence); *Babb v. Missouri Pub. Serv. Commn.*, 414 S.W.3d 64 (Mo. App. 2013) (including discussion that the way solar panels may appear from the street or a neighboring property can devalue neighboring property). Oversight, especially of the particular location of a facility, is not a "waste of resources"; it is the purpose and statutory obligation of the Commission. Nothing in Section 393.170 RSMo or any other statute authorizes the Commission to grant a "blanket CCN" as requested by Ameren Missouri in this case and so the Company's application must be denied.

C. Section 393.190 RSMo

Section 393.190.1 RSMo is the statute governing sale, disposal, and transfer of utility plant and requires:

> No … electrical corporation, … shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its … 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.

The testimony describing the Company's plan indicates "[a]t the end of the 25-year term, the customer may purchase the facility, renew the lease, or have the facility removed from the property" (Ex. 1, p. 4). No explanation about the process for seeking Commission approval or commitments made to the customer has been provided. 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 proponents of the CCN dismiss concerns about Section 393.190 RSMo. Staff offers only that the issue "may be moot" in the future and need not be addressed at this time (Staff Br., p. 15). Even though Ameren Missouri is telling customers they have the option to purchase or remove the facilities, DE suggests the Commission does not have to consider the future treatment of the proposed facilities (DE Br., p. 13). In its initial brief, Ameren Missouri ignores the issue entirely.

The Company's plan, to the extent one exists, will create a dilemma for future commissioners who may be asked to choose between approving the removal of generation facilities that have been paid for by all ratepayers and are used to generate energy and SRECs for all ratepayers or denying approval and requiring a host site to keep a facility on its property that it wants removed. Neither choice is in the public interest. Failure to consider the impact of its proposal further indicates the CCN application is premature. The Company's plan to treat the proposed facility at the end of twenty-five years is unlawful and should be rejected.

D. Commission's rules

The Company has not provided all the information required by 4 CSR 240-3.105(1)(B)1, 4 CSR 240-3.105(1)(B)2, or 4 CSR 240- 3.105(1)(C) and (D). Instead, Ameren Missouri states it will provide this required information later "as allowed by 4 CSR 240-3.105(2)" (*See* Doc. No. 18, p. 5). The course preferred by the Company would have the Commission grant a CCN and then the Company would provide the required information. To be clear, this is not permitted by the rule. Commission Rule 4 CSR 240-3.105(2) provides:

> 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*.

(emphasis added). This rule makes the provision of certain information a pre-requisite to issuance of a CCN. At this point, the Company has not provided the required information and so the Commission must reject the present CCN application.

DE and Renew Missouri admit the Company has not provided this information but suggest that "good cause" exists for a variance from the rules (DE Br., p. 11; Renew Missouri Br., pp. 6-7). There is no good cause to vary from the Commission's rules. This is a deficiency of the Company's own choosing. Ameren Missouri's witness testified the Company is pursuing a "blanket" CCN because negotiations and contractual relationships with third parties would be more difficult if the CNN was granted afterward rather than before (Tr. Vol. 1, p. 107). The Commission is not able to adequately examine the application to protect the public. Neither convenience, expediency, nor necessity can support an act of the Commission not authorized by statute. *State* ex rel. *Kansas City v. Public Service Commission of Missouri*, 257 S.W. 462 (Mo. 1923).

As explained above, Commission Rule 4 CSR 240-3.105(2) does not permit an applicant to provide the required information *after* the authority sought is granted as the Company intends. However, it is true the Commission may waive its rules "for good cause." *See* 4 CSR 240-3.015(1), 4 CSR 240-2.060(4), and 4 CSR 240-2.015(1). Nothing prevented the Company from finding a partner to participate, selecting a location, developing construction plans, or requesting permits and approval from local authorities before making its filing as the applicant the Company bears the burden to so do. However, the Company chose to forego these required steps and in so doing has not presented a plan meeting the requirements under Section 393.170 RSMo

or the Commission's rules at 4 CSR 240-3.105. No good cause has been shown by Ameren Missouri in this matter.

III. Public Policy

Regardless of the legal argument that statute, Commission rules, and case law require the rejection of this application, the Commission *should* reject this CCN application on public policy grounds. Renew Missouri's brief includes a "note" urging the Commission to "not view this program as a model for future solar programs going forward." (Renew Missouri Br., p. 8). Walmart agrees (Walmart Br., p. 5). When a large customer with a stated goal of pursuing renewable energy and an environmental group agree that a project should not be a model for future development, the Commission should carefully scrutinize the policy issues. Walmart and Renew Missouri focus on the impact this proposed program will have on future adoption of distributed generation. However, there are additional policy issues raised by the Company's proposal outlined below.

A. Constitutional issues

The proponents' "site selection" process inexplicably requires religion to be considered when selecting a site location. Appendix A listing "Additional Considerations for Site Evaluation", includes: "Type of Facility: (Office, Educational, Industrial, Manufacturing, Retail, Religious, Data center, Warehouse, Healthcare, Military, Recreational, Other)" (emphasis added). As explained in Public Counsel's initial brief, the religious nature of a site has *nothing* to do with it being a suitable location for solar panels. Making religion a selection criterion likely violates the First Amendment to the U.S. Constitution as well as the Missouri Constitution. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451, 454 (Mo. 1959); *Gibson v. Brewer*, 952 S.W.2d 239, 246 (Mo. 1997);

Mo. Const. Art. I, § 7. The Commission must reject the proponents' attempt to endorse or discriminate against any particular religion.

B. Subsidy issues

The *Non-unanimous Stipulation and Agreement* indicates the Company will seek to include the cost of these projects in Ameren Missouri's revenue requirement in each rate case (Doc. No. 65, p. 3). This treatment means that all ratepayers will pay for this project. However, residential customers – who will be asked to pay more for additional generation they do not need – are unable to participate under the terms of Appendix A. The primary benefit to site partners is the "public relations benefit" (Tr. Vol. 1, p. 160). Because residential customers are excluded, they would be required to subsidize this corporate public image. In effect, there are concerns because the policy, as stated in this matter, is inequitably and arbitrarily applied.

C. Participation of affected parties

Participation in Commission cases by affected members of the public is a desirable outcome and should be encouraged as a matter of good public policy. However, the terms of the *Non-unanimous Stipulation and Agreement* will deny affected persons the opportunity to participate in the site selection process. Only signatories are included in the process for site verification (*See* Doc. No. 65, Appendix A, p.1). This would appear to exclude even Public Counsel and leave the public unrepresented in the process.

Furthermore, if a customer with property near a selected site wanted to intervene there is no process in the proponents' plan for accommodation. No notice is provided to neighboring lots, residences, or businesses once the site is selected. No information about the project is distributed explaining that, in fact, Ameren Missouri's customers pay for the solar facilities rather than the site partner. Landowners' potential desire to contest the installation and location of solar

facilities is a predictable event that has occurred in other situations. *See* generally *Lake at Twelve Oaks Home Assn., Inc. v. Hausman,* 488 S.W.3d 190 (Mo. App. 2016); *Hague v. Trustees of Highlands of Chesterfield*, 431 S.W.3d 504 (Mo. App. 2014); *Babb v. Missouri Pub. Serv. Commn.*, 414 S.W.3d 64 (Mo. App. 2013). Denying the affected members of the public a meaningful opportunity to participate, learn, and comment on the final site location (unknown at this point because Ameren Missouri has not provided that minimum information) is bad public policy and should be rejected.

D. Future adoption of distributed generation

DE offers that "the largest companies across the country have established goals to increase their use of renewable energy" (DE Br., p. 7). But Ameren Missouri does not have any sites selected or any written commitments from possible partners. This should be viewed as an indication the project will not help companies meet environmental goals or encourage future adoption. The comments of Renew Missouri and Walmart prove as much.

Renew Missouri explains reasons why this proposed project will not facilitate future adoption of distributed generation:

> Under the Pilot Program, Ameren would own all the energy generated, retain the RECs, and even risk additional costs being borne by its solar partners. Participating solar partners would gain no economic benefit and no environmental benefit of any kind as a result of this program. Companies that wish to access the financial advantages of generating their own electricity would not benefit from this program.

(Renew Missouri Br., p. 8). Renew adds that the proposal "does not offer any way for these businesses to meet their internal renewable goals[.]" *Id*. The testimony and party positions reflect that this proposed project is unlikely to encourage further adoption of distributed generation. If doing so is a goal of this Commission, it should reject the Company's proposed CCN.

Each of the foregoing Constitutional, subsidy, public participation, and distributed generation public policy outcomes embedded in the Company's proposal are detriments to the public interest. Setting aside the legal deficiencies of the proposed program, these outcomes should cause the Commission to reject this CCN application.

IV. Conclusion

Ameren Missouri's request for a "blanket" CCN must be denied because 1) it requests permission the Commission cannot grant, 2) fails to provide required information to the Commission, and 3) creates detrimental public policy outcomes. The Company's application, as supplemented by the *Non-unanimous Stipulation and Agreement*, does not demonstrate the project is necessary to provide safe and adequate service or that it is an improvement justifying its cost. No party has presented any quantification of putative benefits that would enable Ameren Missouri to meet its burden to show the cost of the project is required to provide safe and adequate service or otherwise justified. Furthermore, Ameren Missouri presents a plan that unlawfully minimizes the Commission's oversight. There being no proper basis in law or policy for the Commission to grant the proposed CCN, the Commission must deny the application.

WHEREFORE Public Counsel submits its reply brief and requests the Commission DENY Ameren Missouri's application for a Certificate of Convenience and Necessity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 18th day of November 2016:

/s/ Tim Opitz