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 Construct a Wind Generation Facility.	)))))	File No. EA-2019-0021

AMEREN MISSOURI'S STATEMENT OF POSITIONS

COMES NOW Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and for its Statement of Positions on the remaining contested issues in this case states as follows:

1. Should the Commission grant the certificate of convenience and necessity ("CCN") and merger approval sought by the Company's application in this docket or reject it?

As reflected in the Second Stipulation and Agreement ("Second Stipulation") entered into (or not opposed) by every party to this case (except the Counties[1]), and as further supported by the pre-filed testimony submitted in this case, the Commission should approve the CCN and approve the merger authority[2] requested by the Company's Application.

a. Standards Governing CCN Requests

Under the well-established standards governing when CCN request meets the "necessary or convenient for the public service," standard[3] the evidence overwhelmingly establishes that a CCN should be issued. The law in Missouri is that the term "necessity" in Section 393.170 "does not mean 'essential' or 'absolutely indispensable,'" but rather, it means that "an additional

[1] Unless otherwise specified, references to the "Counties" are to Atchison County, DeKalb County, the Tarkio R-1 School District, the Rock Port R-2 School District, and the Fairfax R-3 School District, collectively.
[2] For simplicity, further references to approving the requested CCN will also encompass approval of the merger authority.
[3] Section 393.170, RSMo. (Cum. Supp. 2018). Unless otherwise specified, statutory references herein are to the Revised Statutes of Missouri (2016).

service [the Project here] would be an improvement justifying its cost." *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593 (Mo. App. W.D. 1993) *citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d, 216, 219 (Mo. App. K.C. 1973). Moreover, CCN requests are to be judged in terms of whether the CCN promotes the utility's ability to meet its statutory obligation to provide safe and adequate service *to its customers* at just and reasonable rates.[4] As applied to the Project, the law is that "[i]f it [here, the Project] is of sufficient importance to warrant the expense of making [building] it, it *is a public necessity*" within the meaning of the Public Service Commission Law. *State ex rel. Mo., Kan. & Okla. Coach Lines*, 179 S.W.2d 132, 136 (Mo. App. W.D. 1944) (emphasis added). Under those standards, and notwithstanding the Counties' narrow, parochial objection to the CCN, the overwhelming evidence in this case makes it crystal clear that the CCN should be issued in support of the Company's compliance with Missouri's Renewable Energy Standard ("RES").

While not required by law, the Commission usually evaluates CCN requests under the standards outlined in *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994), which are as follows:

- Whether there is a need for the facilities and service;
- Whether the applicant is qualified to own, operate, control and manage the facilities and provide the service;
- Whether the applicant has the financial ability for the undertaking;
- Whether the proposal is economically feasible; and
- Whether the facilities and service promote the public interest.

[4] Section 393.130.1 (requiring utilities to provide safe and adequate service and that its charges be just and reasonable); see also Section 393.1030 (imposing minimum renewable energy standards on electric utilities).

The last standard - the requirement that an applicant's proposal promote the public interest – "is in essence a conclusory finding. . .. 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." *In re: Tartan Energy Corp.,* 3 Mo. P.S.C. 3d 173, 189 (*citing In re: Intercon Gas, Inc*., 30 Mo. P.S.C. at 561).

The overwhelming evidence in this case clearly supports the conclusion that the first four *Tartan* factors have been satisfied, leading to the conclusion that the last factor has also been satisfied, particularly given that the Commission's focus from a public interest perspective is on the utilities it regulates and their customers. *See, e.g.,* § 386.610, RSMo. ("The provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities, and substantial justice *between patrons [utility customers] and public utilities*" (emphasis added); *State ex rel. City of St. Louis v. Public Serv. Comm'n,* 73 S.W.2d 393, 399 (Mo. *banc* 1934); *State ex rel. Capital City Water Co. v. Public Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993) ("The Commission's principal interest is to serve and protect ratepayers"; i.e., not the parochial interests of one county).

b. <u>The evidence.</u>

The Company's preferred resource plan, adopted as part of its most recent triennial Integrated Resource Plan ("IRP") proceeding, is to build or acquire 700 to 800 megawatts ("MW") of wind generation to meet the increased RES compliance requirements that take effect on January 1, 2021 (15% of energy sales must be from renewable energy resources).[5] The Brickyard Hills Project (the "Project") that is the subject of this case will supply 157 MW of the needed 700 – 800 MW, and is the second in a series of projects (the 400 MW High Prairies

[5] Michels Direct, pp. 2-5.

Project approved by the Commission in File No. EA-2018-0202 being the first) being undertaken for RES compliance.[6] Like the High Prairie Project, because the Project is located in Missouri it benefits from the 1.25 multiplier provided for by the RES.[7]

The Project is a cost-effective means for the Company to meet its RES requirements, including because of the approximately $160 million of federal Production Tax Credits ("PTCs") the Project will generate, 100% of which will benefit the Company's customers by being passed back to customers through the RESRAM[8] approved by the Commission in File No. EA-2018-0202. Under the Second Stipulation, the Company has agreed to ensure that all earned PTCs are provided to customers absent a force majeure event. The Project was selected as part of a robust RFP and price discovery process designed to identify the wind generation needed for RES compliance and to capture those opportunities in the most cost-effective way possible, including by selecting projects that would qualify for the full PTC value offered under federal law for projects that go into service by the end of 2020.[9]

Ownership of the Project has numerous advantages over simply buying power under a Purchased Power Agreement ("PPA"). First, while there is no PPA option on the table, indicative PPA pricing provided during the Company's request for proposal ("RFP") process indicates that for an expected 20-year PPA term, a PPA would have cost the Company's customers an additional approximately $1.06 per megawatt-hour ("MWh") as compared to owning the facility.[10] Aside from this strictly dollars and cents comparison, there are other

[6] *Id.*, pp. 4-5.
[7] *Id.*, p. 5.
[8] Renewable Energy Standard Rate Adjustment Mechanism.
[9] Arora Direct, pp. 13-17.
[10] Arora Surrebuttal, p. 12.

significant advantages of owning the facility. These advantages include capturing and retaining the entire long-term value of the facility for its expected 30-year (or more) life rather than in effect "renting" the facility via a PPA where at the end of the PPA term, the Company would have nothing to show for its payments.[11] Second, because a developer selling power under a PPA is likely to require a higher return than the Commission-regulated return implicit in the cost-effectiveness analysis addressed in Mr. Michel's direct testimony, the developer selling under a PPA will likely capture and retain for itself a part of the PTC value that the Company's ownership is capturing for customers. For similar reasons, there are implicitly higher financing costs involved in a PPA.[12] Fourth, as Ameren Missouri gains operational experience with wind generation and as its wind generation portfolio grows, it can optimize (i.e., lower) operations and maintenance expenses and as it does so, the benefit of those lower expenses will be passed on to customers in the RESRAM. If Ameren Missouri is simply buying power and the developer can reduce expenses, those reductions accrue to the developer alone.[13] Finally, when generation is owned by the utilities the Commission regulates, the Commission gains oversight over those assets and their operation in a way that is completely lacking when an unregulated developer owns the facility.[14]

The Project will produce additional benefits. As noted, it takes advantage of the 1.25 multiplier reflected in the RES, will provide local landowners more than $50 million of lease payments over the facility's life, and will create approximately 200 good paying jobs during construction and 5-8 permanent jobs.[15] Finally, despite the Counties complaints to the contrary,

[11] *Id.*, pp. 12-13.
[12] *Id.*, pp. 13-14.
[13] *Id.*, pp. 14-15.
[14] *Id.*, p. 15.
[15] Arora Direct, p. 25.

Atchison County and the other governmental authorities in Atchison County (including the intervening school districts) will see an *increase* in their property taxes as a result of the Project as compared to the *zero* dollars in property taxes they receive today. Any suggestion that the Counties are "losing" property taxes is simply false.

2. *If the Commission approves the CCN and merger approval sought by the Company's application in this docket, what conditions, if any, should the Commission impose?*

The conditions reflected in the Second Stipulation should be imposed on the CCN to be issued in this case. Those conditions are reflected in paragraphs 6 - 8 of the Second Stipulation. The conditions reflected in subparagraphs 6.A, B, C and in paragraphs 7 and 8 are identical in all material respects to conditions imposed by the Commission on the CCN issued in File No. EA-2018-0202. The condition reflected in subparagraph 6.D resolves MDC's conservation-related concerns and bears similarity to conservation-related conditions agreed upon by the Company and MDC in File No. EA-2018-0202, but with some differences owing to the particular facts of this case. The condition is subparagraph 6.E is new and reflects a Staff recommendation with which the Company agreed.

The Counties have suggested a couple of conditions, both of which should be ignored. The Counties' pre-filed testimony flatly urges the Commission to deny the CCN request simply because of the Counties' complaint that they will not receive all of the incremental property taxes generated by the Project.[16] During the Local Public Hearing, at least one County witness suggested that the Counties may not outright oppose the CCN, indicating that if the CCN were to be approved it should only be on the condition of "local taxation."[17] The Counties' updated

[16] The direct testimonies of Atchison County witnesses Taylor and Jones and DeKalb County witnesses Meek and Zimmerman include the same "Relief Requested" provision asking the Commission to deny the CCN request.
[17] Tr., Vol. II, p. 10, ll. 20-23.

position is tantamount to urging the Commission to dictate property taxation in the state of Missouri that is contrary to state law, as reflected in the General Assembly's enactment of Section 153.034, RSMo, which requires that property taxes paid on Commission-regulated utility generation be assessed by the Missouri State Tax Commission and then distributed according to the circuit miles of the utility in the counties where those facilities are located (which are primarily where the utility is serving customers). It is clear the Commission should not countermand the legislature in this fashion, as the cases have recognized. *See, e.g., State ex rel. City of St. Louis v. Public Serv. Comm'n*, 73 S.W.2d 393, 399 (Mo. *banc* 1934) (*quoting Public Serv. Comm'n v. St. Louis-San Francisco Railway Co.*, 256 S.W. 226, 227 (Mo. *banc* 1923)) ("In conducting [its] hearings, the Commission does not sit as a legislative committee for the purpose of formulating a 'public policy' and putting it into effect by the issuance of general rules 'legislative in * * * nature'"). *See also State ex rel. Springfield Warehouse & Transfer Co., et al. v. Public Serv. Comm'n*, 225 S.W.2d 792, 794 (Mo. App. K.C. 1949) ("The Legislature has declared the public policy of this state . . . . Respondent [the Commission] is merely the instrumentality of the Legislature, created for the purpose of carrying out *that policy*" (emphasis added)).

Also, it should be noted that while state law will mean that the Atchison County (and the intervening school districts) will receive less *new, incremental* property taxes than they apparently hoped (assuming the facility were built at all without Ameren Missouri's agreement under the BTA – an assumption that itself is dubious), Atchison County is estimated to receive nearly $7 million of *incremental* property taxes under current state law and with Ameren Missouri owning the facility that it *does not receive today.* This is because a portion of the

facility's assets are, under current state law, locally assessed.[18] Note also that the so-called "loss" the Counties complain about (which is not a loss at all) has been grossly overstated by the Counties in any event, by a factor of about three and one-half times.[19] As also pointed out in the Company's testimony, legislation is currently pending in the General Assembly to change the taxation of wind farms (prospectively) so that wind farms would be locally assessed, and Ameren Missouri is supporting that legislation.[20] However, it is for the General Assembly to decide if that change in policy is warranted. The Commission should not effectively make that policy decision itself in this case.

Respectfully submitted,

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[18] LaMacchia Surrebuttal, p. 9.
[19] *Id.*, pp. 7-11.
[20] Arora Surrebuttal, p. 18.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to counsel of record this 13th day of February, 2018.

/s/ James B. Lowery
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