

**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

OPC’S POSITION STATEMENT

COMES NOW the Office of the Public Counsel (OPC), and hereby submits *OPC’s Position Statement*, which states as follows:

Agreed-Upon Issues

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?*

OPC Position: The OPC does not oppose the February 11, 2019 Non-Unanimous Stipulation and Agreement, including the granting of a certificate of convenience and necessity and merger approval; however, the OPC retains the right to challenge the prudence of any costs incurred as a result of the granting of such a certificate of convenience and necessity in a later case.

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?*

OPC Position: The OPC does not oppose the conditions set forth in the February 11, 2019 Non-Unanimous Stipulation and Agreement.

Counties’ Issues

On February 5, 2019, the Counties of Atchison and DeKalb (the Counties) filed a list of issues, which was separate from the list of issues filed by Ameren Missouri on February 6, 2019.

No party has objected to Ameren Missouri's list of issues; however, on February 8, 2019, Ameren Missouri moved to strike the issues raised by the Counties. Renew Missouri also expressed opposition to the Counties' filing; however, *Renew Missouri's Motion to Strike* primarily focused on the improper introduction of new witnesses rather than the list of issues itself. The Staff of the Missouri Public Service Commission also raised concerns describing the Counties' issues as "legal questions . . . [that] may be addressed in brief." Because the Commission has not yet ruled on the motions to strike the Counties' list of issues, it may be premature to file a position statement on issues that will not be considered by the Commission. Nevertheless, out of an abundance of caution, the following consists of the OPC's position statement to the Counties' issues.

3. *Has the Public Service Commission exceeded its administrative authority in processing this pending CCN because the regulation and control of wind power has not been delegated by the Missouri General Assembly to the Public Service Commission?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

4. *Alternatively, does wind power generation qualify as a "plant" for purposes of the Public Service Commission oversight and regulation in the absence of definitions and legislative delegation of authority?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

5. *Is the Public Service Commission acting illegally in considering applicant's CCN request because the Public Service Commission is interfering with private contractual relationships between private entities who are not regulated by the Public Service Commission?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

6. *Does the Public Service Commission have the authority to change the taxation classification of wind power properties through the granting of a CCN to applicant?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

7. *Alternatively, should the Public Service Commission condition the granting of the CCN on the applicant being ordered to continue to submit to local county tax assessment as commercial property as the subject wind power properties are now assessed rather than to be subjected to assessment by the State Tax Commission?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

8. *Has the Public Service Commission violated the equal protection clauses of the United States' and Missouri Constitutions by creating unreasonable artificial classifications of entities who engage in the wind power activities, some of whom are regulated by the Public Service Commission and others who are not regulated based on their method of operations?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

9. *Should the Public Service Commission grant the applicant special treatment in considering the CCN when private sector entities who own the wind power producing capacity are not regulated by the Public Service Commission?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

10. *Is the Public Service Commission acting prematurely as to applicant's request for a CCN when the applicant does not have any current ownership interest in the subject property and a non-regulated entity which owns the wind power producing capacity under consideration in this matter is not a party to this matter?*

OPC Position: The OPC takes no position on any of the Counties' issues at this time but reserves our right to take a position in our brief.

WHEREFORE, the OPC submits the *OPC's Position Statement* for the Commission's consideration.

Respectfully submitted,

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**ATTORNEYS FOR THE OFFICE
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on February 13, 2019 to all counsel of record.

/s/ Ryan D. Smith