

**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) Case File No.: EA-2019-0021
Authorizing it to Construct a Wind Generation)
Facility.)

**ATCHISON COUNTY MISSOURI’S & INTERVENOR DEKALB COUNTY
MISSOURI’S POSITION STATEMENT**

COMES NOW Atchison County, Missouri and DeKalb County, Missouri by and through their counsel Ivan L. Schraeder, and in compliance with the Commission’s November 15, 2018 *Order Adopting Procedural Schedule* hereby submits this Position Statement for Atchison County, Missouri and for Intervenor DeKalb County, Missouri by stating as follows:

Issue #1 Presented by Applicant & Agreed by these Parties: 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?

The Public Service Commission should refuse to grant the CCN because the applicant has stated that it “prefers” to own wind power production rather than to purchase that power from other providers. Preference for the ownership does not equate to “necessity” or a matter of “convenience”.

The Public Service Commission should refuse to grant the CCN because the applicant has not proven that there is a “necessity” for ownership of the “Brickyard Project” in that the power produced by the private entity in the “Brickyard Project” can be purchased by applicant so

that applicant's ownership is not required to meet any mandates set by either the state of Missouri or the federal government.

The Public Service Commission should refuse to grant the CCN because the applicant has not proven that there is a "necessity" for ownership of the "Brickyard Project" in that the power produced by the private entity in the "Brickyard Project" can be purchased by applicant to meet any of applicant's energy needs to service its customers.

The Public Service Commission should refuse to grant the CCN because the applicant has not proven that there is a "necessity" for ownership of the "Brickyard Project" in order to maintain reasonable electric rates for customers of the applicant under its current rate scheme.

In arriving at any decision related to the application for a CCN, the Public Service Commission has to initially determine if it has jurisdiction to approve applications the subject matter of which is wind power construction and operation.

In the absence of specific legislatively delegated authority, it is the Counties' position that the Public Service Commission does not have authority to approve CCN applications for wind power. There is no specific reference to wind power under the Public Service Commission's grant of authority to regulate under Section 386.250 RSMo.

It is the Counties' position that the Public Service Commission has not exercised its rulemaking authority to regulate or approve CCN applications for wind power as required under Section 386.250(6) RSMo prior to the regulating or approving CCNs for wind power, even if there is a general grant of authority from the General Assembly.

The Public Service Commission should refuse to grant the CCN and disapprove of the merger because the Public Service Commission exceeded its administrative authority in

processing this pending CCN because the regulation and control of wind power has not been specifically delegated by the Missouri General Assembly to the Public Service Commission.

It is the Counties' position that at the time of the application, the subject properties (Brickyard Project) were not and still are not under the jurisdiction of the Public Service Commission because of the absence of authority to regulate wind power and the absence of EDF, the non-regulated private entity which owns the Brickyard Project. However, the nature of the individual wind towers and the movement of energy among and between such towers and transmission lines do not appear to fall within the definition of a "plant" as historically determined and applied by the Public Service Commission.

Alternatively, wind power generation does not qualify as a "plant" for purposes of the Public Service Commission oversight and regulation in the absence of definitions and legislative delegation of authority specifically related to wind power facilities.

The Public Service Commission is 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, those parties being the Counties who are parties to this proceeding and the developer of the wind power project known as the "Brickyard Project" which is not under the authority of the Public Service Commission.

It is the position of the Counties that the Public Service Commission is in violation of the Missouri Constitution Art. III Sec. 39 subsection (5) when it undertakes to approve a CCN that changes relationships between a private entity and a local government such as the Counties and specifically as to Atchison County in its existing contractual relationship with EDF, the current owner of the Brickyard Project. It is further the position of the Counties that the Public Service

Commission is in violation of the Missouri Constitution Art. III Sec. 39 subsection (5) when it undertakes to approve a CCN that removes local taxation decisions and local revenues for wind power from the Counties through the use of the CCN process.

Inasmuch as the Missouri General Assembly cannot grant any such limitations because of the Missouri Constitution's limits of power under Art. III Sec. 39, the Public Service Commission by extension cannot be granted authority to act either to interfere with such contractual conditions or for the reduction in tax revenues due to the Counties through the CCN processes.

The Public Service Commission does not have the authority to change the taxation classification of wind power properties through the granting of a CCN to applicant which has the effect of changing taxation by a local taxing entity as a commercial property to property taxed under the authority of the State Tax Commission.

It is the position of the Counties that the Public Service Commission cannot change the classification of taxation classifications of wind power properties through the CCN process without providing a replacement of such removed and/or reduced taxes because such processes violates the Hancock Amendment to the Missouri Constitution Art. X Sections 16 and 21 because such decision is an action by the state that reduces county revenues without providing a replacement of such lost revenue when taken by the state and distributed to other political subdivisions.

It is the position of the Counties that if the Public Service Commission has authority to act as requested by the applicant, the Public Service Commission must condition the issuance of a CCN upon the payment in lieu of taxes to be made to the taxing entities to prevent loss of revenues to the Counties or that the Public Service Commission must condition the issuance of

the CCN on the continued taxation of the subject wind towers as commercial in order to avoid reduction of local tax revenues.

It is the position of the Counties that the Public Service Commission violates 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. The Public Service Commission violates the constitutional provisions when it grants a CCN depriving counties of tax revenues from an entity that is state regulated when associated with wind power, but it cannot deprive counties of tax revenues from an entity that is not state regulated. The artificial classification of a regulated entity being free from local taxation from any unregulated entity engaging in the identical activities in wind power in the identical locations with the identical equipment is unreasonable and not shown by Ameren to provide for a proper protection of the public, especially when Ameren seeks to act under its own "preference" rather than to show true necessity for tax relief and ownership to acquire wind power supplies.

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 ownership. The Public Service Commission should not 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.

The Public Service Commission is acting prematurely as to applicant's request for a CCN because the applicant does not have any current ownership interest in the non-regulated entity

which owns the wind power producing capacity under consideration in this matter and which is not a party to this matter.

The Public Service Commission is acting prematurely as to applicant's request for a CCN because the applicant has not received any approvals from Atchison County for the transfer or assignment of contract rights and obligations between the non-regulated entity which owns the wind power producing capacity and Atchison County.

It is the Counties' position that Ameren has no current ownership interest in the Brickyard Project or the developer of that project and thus it cannot seek a CCN approval of a merger to advance a possible ownership interest that is not now possessed. It is the Counties' position that Ameren cannot show any immediate necessity for the approval of a suggested merger with a non-regulated entity – EDF. EDF is not a party to this matter and no other party has sought to require EDF to be made a party so that the Public Service Commission can make determinations of EDF's status that undermines Atchison County's rights as to existing contractual relationships and/or to tax revenues.

Issue #2 Presented by Applicant & Agreed by these Parties: 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?

It is the position of the Counties that the Public Service Commission cannot change the classification of taxation classifications of wind power properties through the CCN process without providing a replacement of such removed and/or reduced taxes because such processes violates the Hancock Amendment to the Missouri Constitution Art. X Sections 16 and 21 because such decision is an action by the state that reduces county revenues without providing a

replacement of such lost revenue when taken by the state and distributed to other political subdivisions.

It is the position of the Counties that if the Public Service Commission has authority to act as requested by the applicant, the Public Service Commission must condition the issuance of a CCN upon the payment in lieu of taxes to be made to the taxing entities to prevent loss of revenues to the Counties or that the Public Service Commission must condition the issuance of the CCN on the continued taxation of the subject wind towers as commercial in order to avoid reduction of local tax revenues.

If the Commission approves the CCN and the merger the Public Service Commission must 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.

Alternatively, if the Commission approves the CCN and the merger, the Public Service Commission must condition the granting of the CCN on the applicant making a payment in lieu of taxes to Atchison County to replace the tax revenues lost to Atchison County from the approval of the merger.

If the Commission approves the CCN and the merger, the Public Service Commission should condition the granting of the CCN on the applicant counting all of its transmission devises in Atchison and DeKalb Counties, whether buried or located overhead, that are attached to any wind tower in each county to be considered for purposes of dividing any tax allocations made by the State Tax Commission resulting from the Public Service Commission's approvals.

Issue #3 Presented by the Counties: 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?

In arriving at any decision related to the application for a CCN, the Public Service Commission has to initially determine if it has jurisdiction to approve applications the subject matter of which is wind power construction and operation.

In the absence of specific legislatively delegated authority, it is the Counties' position that the Public Service Commission does not have authority to approve CCN applications for wind power. There is no specific reference to wind power under the Public Service Commission's grant of authority to regulate under Section 386.250 RSMo.

It is the Counties' position that the Public Service Commission has not exercised its rulemaking authority to regulate or approve CCN applications for wind power as required under Section 386.250(6) RSMo prior to the regulating or approving CCNs for wind power, even if there is a general grant of authority from the General Assembly.

Issue #4 Presented by the Counties: 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?

It is the Counties' position that at the time of the application, the subject properties (Brickyard Project) were not and still are not under the jurisdiction of the Public Service Commission because of the absence of authority to regulate wind power and the absence of EDF, the non-regulated private entity which owns the Brickyard Project. However, the nature of the

individual wind towers and the movement of energy among and between such towers and transmission lines do not appear to fall within the definition of a “plant” as historically determined and applied by the Public Service Commission.

Issue #5 Presented by the Counties: 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?

It is the position of the Counties that the Public Service Commission is in violation of the Missouri Constitution Art. III Sec. 39 subsection (5) when it undertakes to approve a CCN that changes relationships between a private entity and a local government such as the Counties and specifically as to Atchison County in its existing contractual relationship with EDF, the current owner of the Brickyard Project. It is further the position of the Counties that the Public Service Commission is in violation of the Missouri Constitution Art. III Sec. 39 subsection (5) when it undertakes to approve a CCN that removes local taxation decisions for wind power from the Counties through the use of the CCN process.

Inasmuch as the Missouri General Assembly cannot grant any such limitations because of the Missouri Constitution’s limits of power under Art. III Sec. 39, the Public Service Commission by extension cannot be granted authority to act either to interfere with such contractual conditions or for the reduction in tax revenues due to the Counties through the CCN processes.

Issue #6 Presented by the Counties: 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?

It is the position of the Counties that the Public Service Commission cannot change the classification of taxation classifications of wind power properties through the CCN process because such processes violate the Hancock Amendment to the Missouri Constitution Art. X Sections 16 and 21 because such decision is an action by the state that reduces county revenues without providing a replacement of such lost revenues when taken by the state from the Counties and distributed to other political subdivisions.

Issue #7 Presented by the Counties: 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?

It is the position of the Counties that the Public Service Commission cannot change the classification of taxation classifications of wind power properties through the CCN process without providing a replacement of such removed and/or reduced taxes because such processes violates the Hancock Amendment to the Missouri Constitution Art. X Sections 16 and 21 because such decision is an action by the state that reduces county revenues without providing a replacement of such lost revenue when taken by the state and distributed to other political subdivisions.

It is the position of the Counties that if the Public Service Commission has authority to act as requested by the applicant. The Public Service Commission must condition the issuance of a CCN upon the payment in lieu of taxes to be made to the taxing entities to prevent loss of revenues to the Counties or that the Public Service Commission must condition the issuance of the CCN on the continued taxation of the subject wind towers as commercial in order to avoid reduction of local tax revenues.

Issue #8 Presented by the Counties: 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?

It is the position of the Counties that the Public Service Commission violates 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. The Public Service Commission violates the constitutional provisions when it grants a CCN depriving counties of tax revenues from an entity that is state regulated when associated with wind power, but it cannot deprive counties of tax revenues from an entity that is not state regulated. The artificial classification of a regulated entity being free from local taxation from any unregulated entity engaging in the identical activities in wind power in the identical locations with the identical equipment is unreasonable and not shown by Ameren to provide for a proper protection of the public, especially when Ameren seeks to act under its own “preference” rather than to show true necessity for tax relief and ownership to acquire wind power supplies.

Issue #9 Presented by the Counties: 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?

See the Counties position explanations for Issues #6, #7 and #8.

Issue #10 Presented by the Counties: 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?

It is the Counties' position that Ameren has no current ownership interest in the Brickyard Project or the developer of that project and thus it cannot seek a CCN approval of a merger to advance a possible ownership interest that is not now possessed. It is the Counties' position that Ameren cannot show any immediate necessity for the approval of a suggested merger with a non-regulated entity – EDF. EDF is not a party to this matter and no other party has sought to require EDF to be made a party so that the Public Service Commission can make determinations of EDF's status that undermines Atchison County's rights as to existing contractual relationships and/or to tax revenues.

WHEREFORE, Atchison County and DeKalb County submit their Position Statement.

Respectfully submitted by:

/s/ Ivan L. Schraeder

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Dated: February 13, 2019

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been e-mailed, this 13th day of February, 2019, to counsels for the parties of record.

/s/ Ivan L. Schraeder