BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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	))))))))	Case No. EA-2015-0256

DIVISION OF ENERGY'S POST-HEARING BRIEF

"Never put off until tomorrow what you can do today"

– Thomas Jefferson, ***Canons of Conduct***

Jefferson's timeless advice embodied in this quote summarizes the positions of the Division of Energy ("DE"), the Company, Brightergy, and Renew Missouri – the proponents of this the proposed Solar Generation Project ("Project") – while OPC, Staff and UFM argue its antithesis. There is no question that solar generation will play an increasing role in Missouri's energy supply in the future. The question before the Commission is whether Missouri will embrace the State's energy future today by facilitating utility-scale solar adoption, or whether it will delay the inevitable advancement of progress.

Issue 1: *Does the evidence establish that the Solar Generation project as described in GMO's applications in this docket and for which GMO is seeking a certificate of convenience and necessity ("CCN"), is "necessary or convenient for the public service" within the meaning of section 303.170, RSMo?*

DE's position is that the Project is both necessary and convenient for the public service. Per the ruling in *State ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri,* 848 S.W.2d 593, 597 (Mo. App. 1993):

> The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." § 393.170.3**. 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. Beaufort Transfer Co. v. Clark,* 504 S.W.2d at 219. . . . . The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. *State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n,* 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (Emphases added.)

All the parties to this case acknowledge that a CCN need not be "essential" or "absolutely indispensable" to be necessary or convenient for the public service per § 393.170.3; rather, the Project need only provide an incremental improvement to the public service in order to justify its cost.

In evaluating whether or not the Project is "necessary or convenient," all parties agree that the Commission's "Tartan" factors from its 1994 report and order in the case *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994) should inform the Commission's decision. The factors are:

- There must be a need for the service;
- The applicant must be qualified to provide the proposed service;
- The applicant must have the financial ability to provide the service;
- The applicant's proposal must be economically feasible; and
- The service must promote the public interest.

However, not all parties appropriately apply these factors when evaluating the Project. To determine the appropriate scope of information for consideration in evaluating this Project, the Commission should look to the evidence relied on in prior CCN cases.

Issue 1a: *Does the evidence establish that there is a need for the project?*

Yes. The Project can reduce total carbon dioxide emissions from the stacks of the Company's affected generating units. The Project will provide public health and economic

development benefits and will further the goal set out in the Missouri Comprehensive State Energy Plan ("CSEP") to diversify Missouri's energy supply resources in an effort to lead Missouri to a more innovative and secure energy future.

In *In Re Tartan Energy*, the Commission approved an application for a CCN for Tartan Energy Group L.C., ("Tartan") to construct, own and operate a natural gas distribution system in parts of south central Missouri. *Id*. The Commission found that there were no regulated gas suppliers in the area proposed to be certificated; however, available fuel sources in the area included propane, wood, fuel oil, and electricity. *Id*. The Commission further found that:

> [N]atural gas is one of the preferred forms of energy in the central United States where it is **readily available**. The availability of natural gas **provides a new energy alternative which may lower energy costs and promote economic development**. Natural gas may also provide **an inviting alternative for industrial and commercial customers**. In addition, the project itself will represent a major capital investment in south central Missouri, which will **require the employment of workers** during the construction phase of the project, and for the operation of the pipeline." *Id*. (Emphases added.)

Additionally, the Commission found that, "… as a general policy in recent years, [the Commission] has looked favorably upon applications designed to spread the availability of natural gas throughout the State of Missouri wherever feasible." *Id*. There are clear parallels with the current case with respect to the favorability of increasing solar resource generation from economic development and supply perspectives.

The present case is not the first CCN for a utility-scale solar facility in Missouri. The Commission previously approved a CCN for a utility-scale solar facility in its order approving an application for Ameren Missouri to construct, own and operate solar generation facilities in O'Fallon, Missouri. While the Commission did not make specific findings of fact or conclusions of law in that case due to a Stipulation and Agreement, the Commission stated that, "[b]ased on the Commission's impartial and independent review of Ameren Missouri's Application, Staff's

rebuttal testimony, and the Amended Stipulation, the Commission finds that the proposed solar facility is necessary and convenient for the public service. Therefore, the Commission shall grant Ameren Missouri's application …."[1] The Commission's decision came despite the fact that Ameren Missouri could have purchased solar Renewable Energy Credits ("SRECs") to achieve the same ends as building the O'Fallon facility. In its Order approving the case, the Commission also referenced the Tartan factors.

Like the projects in both *Tartan* and *O'Fallon* the Project at issue here will provide the requisite improvement to the public service. The Company states that the facility will produce approximately 4,700 megawatt-hours annually, which is enough to serve approximately 440 homes.[2] While GMO anticipates it will be able to meet its solar renewable requirements with SRECS acquired from customer generators through 2026, the Project will provide approximately 5,875 SRECS annually, which will be available to the Company to meet known current solar renewable compliance requirements under Missouri's Renewable Energy Standard ("RES") in 2027 and beyond, subject to the limitations in the RES.[3]

Per the U.S. Environmental Protection Agency's Clean Power Plan ("CPP") final rule issued on October 23, 2015, under a mass-based compliance approach, affected generating units must demonstrate the reduction of total carbon emissions at their stacks[4] through the surrender of equivalent emissions allowances.[5] The Project will alleviate some of the uncertainty regarding

[1] *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, Install, Own, Operate, Maintain, and Otherwise Control and Manage Solar Generation Facilities in O'Fallon Missouri.* EA-2014- 0136, *Order Approving Amended Non-Unanimous Stipulation and Agreement*, 2-3, (2014).
[2] GMO's Application, p. 3
[3] GMO Application, p. 5.
[4] For example, see 80 CFR 64912: "Mass-based plans rely exclusively on reported stack emissions for determining whether a mass-based CO_2 emission goal is achieved. This means that under a mass-based plan any emission reduction measures that are implemented are automatically accounted for in reduced stack emissions of CO_2 from affected EGUs …."
[5] See 80 CFR 64952.

potential Clean Power Plan ("CPP") compliance by the Company. If Kansas adopts a rate-based compliance approach and Missouri adopts a mass-based compliance approach for the CPP, then there will be a challenge in determining how the Company moves credits or allowances for projects between the states.[6] Constructing the project in Missouri would eliminate some of that uncertainty, because GMO would have the generation asset constructed in Missouri; by contrast, much of GMO's wind which is currently located in Kansas.[7] GMO's witness Mr. Ling testified that the CPP requires GMO to reduce carbon dioxide emissions at its affected plants by as much as 37%.[8] This reduction is significant and will require GMO to diversify its generation portfolio.[9]

The Project is also consistent with the guiding principles and recommendations set out in Missouri's CSEP, which states, "Missouri must identify and capitalize on opportunities to maximize in-state clean energy resources and decrease dependence on imported fossil fuel energy sources."[10] By increasing the diversity and promoting the security of the state's energy supply, Missouri, "… can create more 21st century jobs, grow [its] economy, improve the reliability and resilience of [its] energy systems, and keep utility bills affordable."[11] The CSEP also indicated that major businesses located in Missouri, such as Wal-Mart and IKEA, have recently signed an agreement to procure an additional 8 million megawatt hours per annum of diversified energy supply.[12] DE witness Mr. Hyman testified that the Project would diversify GMO's generation portfolio, likely increasing the State's economic competitiveness in the eyes of businesses seeking to secure additional diversified energy sources.[13] GMO witness Mr. Ives

[6] Tr. Vol. 2, p. 126, l. 6-11.
[7] Tr. Vol. 2, p. 126, l. 19-23.
[8] Tr. Vol. 2, p. 130, l. 4-6.
[9] Tr. Vol. 2, p. 130, l. 6-8.
[10] Exhibit 2, p. 2.
[11] Exhibit 2, p. 2.
[12] Tr. Vol. 2, p. 267, l. 8-18.
[13] Tr. Vol. 2, p. 267, l. 19-25 & 68, l. 1-3.

testified that the Project is responsive to customer interest in solar energy at the residential, commercial, and industrial levels.[14]

The Project, like those approved by the Commission in *Tartan* and *O'Fallon*, will increase the availability of an alternative energy source in Missouri in keeping with the preferences of both GMO and its customers. The Project may lower energy costs in the long term by reducing the State's dependence on imported fossil fuel energy sources, and may also promote economic development by meeting the diverse energy needs of major businesses in the State. While not a major capital improvement relative to the Company's annual capital investment budget, the Project will employ workers during the construction period and will provide GMO with hands-on solar operation and maintenance skills – experience which the Company can leverage in future utility scale-solar projects.

Issue 1b: *Is GMO qualified to provide the proposed project services?*

Yes. Although the Company cites the experience it will acquire as a reason to permit the facility's construction, it is nonetheless a large utility provider with decades of experience in power generation and delivery.

In *In Re Tartan Energy*, the Commission stated in determining that Tartan was qualified to provide the proposed service:

> [N]o one has significantly challenged the safety or adequacy of Tartan's proposed facilities, and the owners and managers of Tartan are experienced in the natural gas industry. The Commission is confident that Tartan possesses the necessary knowledge of the natural gas utility industry including the industry as it has developed in the State of Missouri, as well as of all the requisite technical requirements regarding engineering, safety, and so forth, and so finds. *Id.* at 183.

The only party to the present case that alleges any doubt of GMO's qualifications to provide this service is OPC, which claims that the Company's statement that it wishes to gain

[14] Tr. Vol. 2, p. 172, l. 1-25 & 173, l. 1-14

hands-on utility-scale solar operation and maintenance skills through the Project is an admission that GMO does not have the requisite qualifications to provide this service. OPC's argument is absurd in that, if taken to its logical conclusion, it would mean that no incumbent utility could ever gain hands-on experience with new alternative energy sources without having prior hands-on experience with that energy source. If this were the standard that was to be applied, then Ameren Missouri would not have been qualified to build, own and operate the O'Fallon solar facility.

The proper standard for determining an applicant's qualifications to provide the proposed project services was stated by Staff witness Mr. Beck, who testified that, in cases like the Company's Project as well as in the O'Fallon solar facility, his position has been that utilities like GMO have power plants that are much more complicated than a solar plant to operate and maintain. In his expert opinion, this is proof of a utility's ability to operate a solar facility like the one proposed.[15] GMO witness Mr. Ives also testified to the Company's experience, stating that while the Project incorporates a new and evolving technology, its implications are not unlike what the Company deals with on a day-to-day basis in terms of operating a complex electric system.[16] Mr. Ives further stated that, even though the Company seeks to gain hands-on experience with this new and evolving technology, as a utility that has been in operation for over a hundred years the Company can handle the implications of a 3 megawatt facility.[17] Additionally, GMO witness Mr. Anyanwu testified that the Company has contracted with DLR, an engineering firm that has experience building large-scale solar facilities, and Sungevity,

[15] Tr. Vol. 2, p. 299, l. 1-9.
[16] Tr. Vol. 2, p. 183, l. 3-8.
[17] Tr. Vol. 2, p. 183, l. 9-12.

which also has experience with solar installations and knows how to manage utility-scale solar projects.[18]

No party has seriously challenged the safety or adequacy of GMO's proposed Project, and the Company has over one hundred years of experience in the electric industry. The Commission should therefore be confident that GMO possesses the necessary knowledge of the electric utility industry, including the industry in the State of Missouri, as well as of all the requisite technical requirements regarding engineering and safety. The Commission should also be assured that if the Company does not have the necessary knowledge "in-house" that it can acquire the requisite knowledge from the Project contractors.

Issue 1c.: *Does GMO have the financial ability to provide the project services?*

Yes. There is no evidence to indicate that the Company does not have the resources to complete this project.

In *In Re Tartan Energy*, the Commission stated in determining that Tartan had the financial ability to provide the proposed service, "The evidence indicates that Tartan is owned by Torch Energy Advisors, Inc., a company which is in the business of energy investment …."*Id.* at 183.It is clear that with Torch Energy Advisors, Inc. backing Tartan, Tartan has the financial ability to provide the proposed service…"*Id.* at 184.

Again, the only party to this case which questions the Company's financial ability to provide the proposed service is OPC, whose argument solely relies on the fact that ratepayers will ultimately have to pay for all or a significant portion of the Project. This is the wrong standard for determining financial ability. Both DE's witness Mr. Hyman and Staff's witness Ms. Lyons testified that GMO has the financial ability to provide the proposed service based off the

[18] Tr. Vol. 2, p. 104, l. 8-18.

Company's intent to fund the project through its general funds.[19] GMO is a subsidiary of Great Plains Energy, which also owns Kansas City Power & Light Company ("KCP&L").[20] GMO witness Mr. Ives testified that the Company has an approximate 12% ownership stake in a coal-fired facility that it jointly built with KCP&L several years ago. The total cost of the jointly-owned coal-fired facility was just under $2 billion, making GMO's share approximately $22 million. The jointly-owned coal plant was substantially more expensive than the proposed budget of ** [redacted] ** in this case, which shows that GMO has the financial ability to provide this service.[21]

Like in *In re Tartan*, GMO is owned by a utility holding company which is in the business of energy investment, as Great Plains Energy is the owner of two public utility companies. The Company has demonstrated its ability to finance generation projects with its general funds through its recent financing of a much larger, jointly-owned, multibillion dollar, coal-fired facility.

Issue 1d: *Is GMO's proposed project economically feasible?*

Yes. Impact to the average GMO ratepayer should be minimal, and the project can be constructed on a reasonable budget.

In *In re Tartan Energy*, the Commission stated in determining that Tartan's project was economically feasible that, "The Commission has considered the ... evidence presented, and is of the opinion that there is sufficient evidence from which to find that Tartan's proposal ... represents a viable project."*Id*. at 189. The Commission went on to state, "Tartan bears most of

[19]Tr. Vol. 2, p. 271, l. 11-14 & p. 415, l. 16-18.
[20] Tr. Vol. 2, p. 210, l. 6-8.
[21] Tr. Vol. 2, p. 183, l. 13-24.

the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs." *Id*.

Staff and OPC contend that the project is not economically feasible because it is not the least cost option for adding renewable energy at this time. This argument is inconsistent with past Commission decisions in CCN cases and specifically with the Commission's decision in *O'Fallon*.

In *O'Fallon*, the Staff recommended that the Commission approve a CCN for Ameren Missouri to build a utility-scale solar facility to meet its RES requirements even though the proposed solar facility was not the least cost compliance option.[22] In that case, Ameren Missouri had previously met the RES requirement by purchasing renewable energy credits from out-of-state at a cost significantly less than what it would cost to build the O'Fallon solar facility[23]. Despite it not being the least cost compliance option, Staff recommended that the Commission approve Ameren Missouri's CCN application for the O'Fallon solar facility because it would also diversify the utility's renewable energy portfolio and serve as an additional in-state resource.[24] Although GMO does not immediately need this Project for RES compliance, the Project enables the Company to comply with the RES in the future, aids with other potential environmental compliance requirements, and provides other public benefits.

In *In re Tartan*, the evidence the Commission considered in determining that the project was economically feasible regarded estimated conversion rates from propone to natural gas and estimated prices for natural gas service relative to propane prices. *Id*. at 184 & 185. The economic concerns raised in *In re Tartan* do not apply to GMO's Project. The Project will, serve

[22] Tr. Vol. 2, p. 341, l. 21-25, & p. 342, l. 1-11.
[23] Tr. Vol. 2, p. 341, l. 13-20
[24] Tr. Vol. 2, p. 340, l. 13-21

an established customer base as part of the Company's portfolio of generation resources. Additionally, the solar facility's ability to be used on a regular basis in place of other Company resources will provide public benefits based on reduced potential environmental compliance costs and improved public health.

The opponents of this Project have made much ado about the fact that it is not the least cost option; however, the impact on ratepayers will be minimal. Staff testified that the approximate average annual rate impact for GMO customers will be ** ** annually, or ** ** per month.[25] Despite not being least cost, the Project is nonetheless economically feasible. These considerations are consistent with the Commission's determination in *O'Fallon* that a utility-scale solar facility need not be least cost to be economically feasible. The Project will fulfill the needs previously described with minimal cost impacts on GMO ratepayers while enhancing diversity of the generation portfolio and providing environmental, public health and economic development benefits.

Issue 1e: *Does GMO's proposed project promote the public interest?*

Yes. As noted above, the Project results in the reduction of total carbon dioxide emissions from the stacks of the Company's affected generating units, assisting in compliance with potential future environmental mandates, as well as providing public health and economic benefits.

The Commission in *In re Tartan* stated, "[g]enerally 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." *Id*. at 189. While this may be the general standard that has been applied – and the Project meets the other four CCN

[25] Tr. Vol. 2, p. 447, l. 22-25 & p. 448, l. 1-5.

criteria – the Commission has articulated a more detailed explanation of the public interest standard in at least one subsequent CCN case. In *Cass County*, EA-2009-0118, (Mo. P.S.C. Mar. 18, 2009) the Commission stated:

> The public interest is a matter of policy to be determined by the Commission. It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served. **Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed. This means that some of the public may suffer adverse consequences for the total public interest.** Individual rights are subservient to the rights of the public. The "public interest" necessarily must include the interests of both the ratepaying public and the investing public; however, as noted, the rights of individual groups are subservient to the rights of the public in general.[26] (Emphasis added.)

In *Cass County*, the Commission in finding that the application for a CCN promoted the public interest stated that the facilities "are each improvements that provide sufficient additional service to justify their cost" and that the facilities, "have improved the reliability of the transmission system, [and] have improved the overall efficiency and economics of transmission operations..." *Id*.

In this case the Commission must balance the interests of not just GMO's ratepayers and its investors, but the public as a whole. The Project will result in a reduction of total carbon dioxide emissions from the stacks of the Company's affected generating units.[27] The reductions will either occur through offsetting the need to build additional fossil-fuel using resources or through offsetting the need to use current fossil-fuel using resources.[28]

As previously stated, constructing the project in Missouri would eliminate some of the uncertainty regarding cross-state trading of CPP compliance allowances and/or credits, because

[26] *In the Matter of the Application of KCP&L Greater Missouri Operations Co. for Permission & Approval & A Certificate of Pub. Convenience & Necessity Authorizing It to Acquire, Construct, Install, Own, Operate, Maintain, & Otherwise Control & Manage Elec. Prod. & Related Facilities in Certain Areas of Cass County, Missouri Near the City of Peculiar,* EA-2009-0118, (Mo. P.S.C. Mar. 18, 2009)
[27] Tr. Vol. 2, p. 262, l. 20-23.
[28] Tr. Vol. 2, p. 262, l. 25 & p. 263, l. 1-4.

GMO would have the generation asset constructed in Missouri. GMO's witness Mr. Ling testified that the CPP requires GMO to reduce carbon dioxide emissions at its affected plants by as much as 37%.[29] This reduction is significant and will require GMO to diversify its generation portfolio.[30]

Diversification of supply, as previously stated, was a guiding principle of the CSEP. The CSEP states, "[A]n overreliance on any single energy source creates unnecessary risk. Diversified energy portfolios allow for flexibility to respond to price dynamics, supply constraints, energy emergencies, and changing regulatory requirements."[31] The CSEP further states, "Diversifying the energy sources utilized and consumed in Missouri will make the state less reliant on imported energy, increase economic development, and provide a hedge against future price volatility."[32]

The Project will also address an identified need of both GMO's customers, and major businesses in Missouri as a whole, by providing them with additional diversity in energy resources. While there will be a minor rate impact on GMO customers, the approval of this Project can reduce total carbon dioxide emissions from the stacks of the Company's affected generating units, provide public health and economic development benefits, and can further the goal set out in the CSEP to diversify Missouri's energy supply resources in an effort to lead Missouri to a more innovative and secure energy future.

On balance, when considering all the benefits of this Project relative to the modest cost to ratepayers, this Project is in the public interest. As the Commission stated in *In re Tartan*, "…just as the mule breeding business vanished upon the advent of the farm tractor and truck;

[29] Tr. Vol. 2, p. 130, l. 4-6.
[30] Tr. Vol. 2, p. 130, l. 6-8.
[31] Exhibit 2, p. 7
[32] Id.

just as wood stoves gave way to [propane]. Such casualties are the price paid for 'progress'." Again, there is no question that solar generation will play an increasing role in Missouri's energy supply in the future. DE recommends that the Commission reject the arguments to delay made by the Project's opponents, and instead plan and prepare for the State's energy future today by approving GMO's CCN to build a utility-scale solar project as in the Ameren Missouri utility-scale solar CCN case just two years ago.

Issue 2: *If GMO's CCN Application does not meet the criteria set forth by Tartan, is there an exception that would still permit the Commission to grant the CCN?*

GMO's Application does meet the Tartan standards, as outlined above and adopted by the Commission in past cases. Even if it did not, the Tartan standards are not statutory, but are instead a creation of the Commission. As such, the Commission, at its discretion, may abandon its precedent and modify or discount any of the factors listed above.

Issue 3: *Should the impact on rate payers be considered by the Commission when weighing GMO's CCN application?*

Yes, the Commission should consider how the project serves the public interest and impacts rate-payers by achieving progress toward compliance with potential future environmental mandates, as well as providing public health and economic development benefits. As previously stated, the Project can be built with minimal impacts on GMO ratepayers. Issues specific to prudency and ratemaking treatment should be considered in a rate case as per prior CCN decisions by the Commission.

Issue 4: *Who will benefit from any tax credits extended by the U.S. government should the project be approved?*

DE takes no position on who will benefit from any tax credits extended by the US government. DE notes that Staff's witness Ms. Lyons testified that GMO ratepayers could

receive a benefit from tax credits received by the Company as early as 2021.[33] Tax credits, as Staff's witness states, reduce the tax liability of the Company, which in turn reduces the revenue requirement that is used to determine customer rates in a general rate case.[34]

Issue 5: *If the Commission approves the CCN, should it impose any conditions?*

DE takes no position on whether there are any conditions that would be appropriate if the CCN is approved. DE does disagree with the imposition of any economic conditions regarding the Company's ability to recover the costs associated with the Project, as DE's position is that issues specific to prudency and ratemaking treatment should be considered in a rate case per prior CCN decisions by the Commission.

WHEREFORE, DE respectfully submits its Post-Hearing Brief and requests that the Commission approve a CCN for GMO's Project as described in its application.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been emailed to the certified service list this 18th day of February, 2015.

/s/ Alexander Antal

[33] Tr. Vol. 2, p. 441, l. 12-16.
[34] Tr. Vol. 2, p. 442, l. 8-23.