BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of South Central MCN LLC for Approval of Transfer of Assets and a Certificate of Convenience and Necessity	)))	File No. EA-2016-0036

STAFF RECOMMENDATION THAT COMMISSION HAS JURISDICTION AND SHOULD SCHEDULE PREHEARING CONFERENCE FOR PARTIES TO PROPOSE PROCEDURAL SCHEDULE INCLUDING EVIDENTIARY HEARINGS

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, in response to the Missouri Public Service Commission's October 14, 2015, Third Order Extending Time To File Recommendation, which directed the Staff to file its recommendation no later than November 5, 2015, respecting the August 19, 2015, Application of South Central MCN LLC ("SCMCN"). The Commission has issued other extensions of time for the Staff to file its recommendation. On September 16, 2015, the Commission issued a Second Order Extending Time To File Recommendation directing the Staff to file its recommendation on October 15, 2015; on September 10, 2015, the Commission issued an Order Extending Time To File Recommendation directing the Staff to file its recommendation by September 17, 2015; and on August 21, 2015, the Commission issued an Order Directing Filing Of Recommendation by September 10, 2015, regarding the August 19, 2015 Application of SCMCN. Due to outstanding matters which were hoped to be resolved that have not been, SCMCN in each instance prior to the deadline for the Staff's recommendation filed a joint motion for extension of time for the Staff to file its recommendation. The Staff's recommendation is that the Commission has jurisdiction over SCMCN's Application and that the Commission should schedule a prehearing

conference for the parties and movant for intervention City of Springfield, Missouri (by and through the Board of Public Utilities ("City Utilities")) to propose a procedural schedule, including evidentiary hearings. In support of the Staff's recommendation, the Staff states as follows:

1. On August 19, 2015, SCMCN filed an Application pursuant to Sections 393.170 and 393.190 RSMo., 4 CSR 240-2.060, 4 CSR 240-3.105, and 4 CSR 240-3.110 for an Order of the Commission disclaiming jurisdiction under Section 393.190.1 RSMo. and confirming the inapplicability of 4 CSR 240-3.110 to a certain transaction including the transfer of certain existing transmission assets to SCMCN by the City of Nixa, Missouri ("Nixa") pursuant to an Asset Purchase Agreement ("APA")(Appendix A to the Application) between SCMCN and Nixa or, in the alternative, authorizing SCMCN and Nixa to execute any and all documents necessary to effectuate the transaction in question.

2. At Paragraph 10, page 3, of its Application, SCMCN states that on August 14, 2015, SCMCN and Nixa executed the APA under which SCMCN agrees to purchase and Nixa agrees to sell approximately ten miles of 69kV electric transmission lines and related facilities located in Christian and Greene Counties. Nixa will retain its distribution facilities and will continue to provide distribution service and retail sales to its customers. (Paragraph 11, page 3, Application). SCMCN will continue to have no generation or retail distribution assets, after the closing of the pending transaction. (Paragraph 2, page 2, Application).

3. Paragraph 1, page 1 of its Application explains that SCMCN was formed to operate within the Southwest Power Pool, Inc. ("SPP") as a transmission-only

company, and explains that SCMCN intends to enter long-term agreements to develop, own, and operate new or existing transmission assets with cooperatives, municipally-owned electric systems, and joint action agencies, including the Missouri Joint Municipal Electric Utilities Commission ("MJMEUC"), collectively, "Public Power." As part of its strategy for start-up, SCMCN has offered to purchase existing assets of Public Power entities. SCMCN explains in Paragraph 23, page 8 of its Application that acquisition of existing transmission assets is contemplated by SCMCN as a means for it to put into effect a FERC rate and begin the work of improving and integrating these existing transmission assets with other transmission assets SCMCN will acquire in Missouri and elsewhere.

4. At Paragraph 16, page 5 of its Application SCMCN relates that Nixa's:

> municipally-owned electric utility is not rate-regulated by the Commission and therefore is not an electrical corporation subject to Section 393.190. Moreover, SCMCN's understanding is that no Commission approval is required for an electrical corporation to *purchase* an asset, and SCMCN has found no precedent requiring a purchaser of assets from a municipally-owned electric utility to obtain Commission approval authorizing such a transaction. . . .

SCMCN requests that the Commission hold, among other things, that no approval is required under Section 393.190.1, RSMo., and that compliance with the requirements of 4 CSR 240-3.105(1)(A), 4 CSR 240-3.105(1)(B).1-.3, and 4 CSR 240-3.110 is unnecessary. (*Id*.; Paragraph 34, page 11, Application.)

5. In the alternative, out of an abundance of caution, at Paragraph 16, page 5, SCMCN requests, Commission approval of the transaction, and provides information in conformance with 4 CSR 240-3.110 and to assist the Commission in its determination of SCMCN's request for a certificate of convenience and necessity ("CCN") under 4

CSR 240-3.105. Although SCMCN requests at Paragraph 16, page 5 of its Application that the Commission hold that compliance with the requirements of 4 CSR 240-3.110 is unnecessary, 4 CSR 240-3.110 is not among the provisions that SCMCN asserts in Paragraph 36, page 12 of its Application are inapplicable or should be waived by the Commission. At Paragraph 34, pages 10-11, SCMCN states that the new CCN being sought by SCMCN is for a line CCN and not an area CCN and is not for the construction of new transmission lines. Thus, SCMCN is seeking in its alternative request a line CCN for the existing transmission assets of Nixa.

6. SCMCN states at Paragraph 32, page 10 of its Application that the proposed transaction will have no cost or rate impact on any investor owned utilities or their customers regulated by the Commission because the rates of all affected customers (all of whom are located in the City Utilities transmission pricing zone, including within Nixa) are exempt from the Commission's regulation. Nixa is currently purchasing bundled power and transmission delivery services from City Utilities in SPP Transmission Pricing Zone 3, and City Utilities is the only customer taking network integration transmission service ("NITS") from SPP in Zone 3. SCMCN states in footnote 9 on page 10 of its Application:

> While the Zone 3 [Annual Transmission Revenue Requirements ("ATRR")] will increase slightly as a result of inclusion of SCMCN's ATRR in the Zone 3 rates, [Nixa] will, pursuant to a non-jurisdictional arrangement between [Nixa] and [Cities Utilities], absorb those additional costs through its wholesale rates from [City Utilities], thereby shielding other [City Utilities] customers from the increase in ATRR.

SCMCN goes on to state that the proposed transaction will not impact ATRR in other SPP Transmission Pricing Zones.

7. On August 26, 2015, Nixa filed an Application to Intervene. Nixa states in

Paragraph 2, page 1 of its Application to Intervene that it supports SCMCN's Application for a CCN and any necessary approval to transfer assets filed on August 19, 2015. Nixa relates at Paragraph 4, page 2 that it has undertaken an economic analysis of the proposed transaction's costs and benefits and based on that analysis, Nixa has concluded that the proposed transaction is in the best interests of Nixa and its retail customers. Nixa also says in Paragraph 4, page 2 that it has worked with City Utilities to assure City Utilities customers will be protected from any increase in annual transmission revenue requirements resulting from the proposed transaction. Nixa states in Paragraph 5, page 2 of its Application to Intervene: "For the reasons stated herein and by SCMCN in the Application, the duly elected City Council of the City believes the Transaction to be in the interest of the City and the public generally." SCMCN relates in Paragraph 30, page 9 of its Application that "At the closing of the Transaction, SCMCN will pay the City an amount equal to what would be net book value had the City been operating as a FERC-regulated utility. [Footnote omitted.]" On September 9, 2015, the Commission issued an Order Granting Intervention To The City Of Nixa.

8. In its Application at Paragraph 12, pages 3-4, and Paragraph 23, page 8, SCMCN explains that initially it will rely, as Nixa does now, on contract services to operate and maintain the transmission assets. The proposed transaction requires Nixa to sell, assign, transfer, convey, and deliver to SCMCN, Nixa's interest in certain contracts, including Nixa's existing contract with City Utilities to operate and maintain the transmission assets. The SCMCN Application is based on City Utilities continuing to provide comparable services in 2015 and 2016 while SCMCN is building its own control

center and arranging for long-term operation and maintenance services. SCMCN advised that written consent by City Utilities to assignment of the maintenance agreement had not yet been obtained but would be late-filed in accordance with 4 CSR 240-3.130(2).

9. On October 30, 2015, City Utilities filed a Motion To Intervene ("Motion") and stated its opposition to the Application of SCMCN. In Paragraph 7, at page 2, of its Motion, City Utilities alleges that the proposed sale will have a significant negative impact on City Utilities and its customers, and therefore SCMCN's requested authorization for transfer of certain transmission assets and for a CCN will be detrimental to the public interest. City Utilities asserts in Paragraph 8(c), at page 4, of its Motion, that City Utilities estimates the arrangement proposed by SCMCN with SPP in Paragraph 32 of SCMCN's Application would cost City Utilities' customers, based on current information, an additional amount calculated at approximately $875,000 per year, which City Utilities would intend to oppose.

10. The APA, which is Appendix A to the Application, filed on August 19, 2015, defines "effective date" at Article 1.1.24: "Effective Date is defined in the introductory paragraph of this Agreement." The introductory paragraph of the APA indicates that "effective date" is August 14, 2015, the date the APA was executed by SCMCN and Nixa. The introductory paragraph of the APA states, in part, as follows at page 1:

> THIS ASSET PURCHASE AGREEMENT (together with all Schedules and Exhibits attached hereto, this Agreement) is executed as of August __, 2015 (Effective Date), by and between SOUTH CENTRAL MCN LLC, a Delaware limited liability company (Buyer), and the CITY OF NIXA, MISSOURI, a charter city of the state of Missouri (Seller). . . .

Some of the “Exhibits” to the APA are pages which are placeholders showing the language “Draft to be attached no later than thirty (30) days from the Effective Date). These specific placeholders are as follows:

Exhibit A: Interconnection Assignment (“IA”) Agreement
Exhibit F: Transition Services Agreement
Exhibit G: Pole Attachment Agreement
Exhibit H: Transmission Services Agreement
Exhibit I: Lease and Access Agreement

There are other Exhibits to the APA that require signatures, lists of items, or are otherwise incomplete. These specific Exhibits are as follows:

Exhibit B: Warranty Deed – signatures, legal description, permitted encumbrances to follow
Exhibit C: Assignment of Easement – signatures, easements, encumbrances to follow
Exhibit D: Bill of Sale – signatures, personal property to follow
Exhibit E: Assignment and Assumption Agreement – signatures, assignable contracts, assignable permits to follow

11. Article 7.1 of the APA defines “Closing”, in part, as follows at page 19:

> The sale and delivery of the Assets to Buyer, the payment of the Purchase Price to Seller, and the consummation of the other respective obligations of the parties contemplated by this Agreement will take place at the closing (the Closing). If this Agreement has not been terminated in accordance with ARTICLE 9, then upon the terms and subject to the satisfaction or waiver of the conditions precedent contained in ARTICLES 5 and 7, the Closing of the Contemplated Transactions shall occur within 15 Days following the date on which the last of the conditions precedent contained in ARTICLES 5 and 7 have been satisfied or waived. . . .

12. Pursuant to Section 393.120, RSMo. 2000, the terms “electrical corporation” and “electric plant” are defined in Section 386.020(14) and (15), RSMo. Cum. Supp. 2013 as follows:

> (14) **"Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever**, other than a railroad, light rail or street railroad corporation

> generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, **owning, operating, controlling or managing any electric plant** except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others [Emphasis added];
>
> (15) **"Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the** generation, **transmission***,* distribution, sale or furnishing **of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power** [Emphasis added];

Both definitions have remained unchanged since the enactment of the Public Service Commission Act in 1913.

13. Section 1.090, RSMo, provides, "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." When the Legislature provides a definition for a word or phrase, that definition is authoritative and to be read into the statute where that word or phrase appears as a part of the statute itself. *State ex rel. Exchange Bank of Richmond v. Allison*, 155 Mo. 325, 56 S.W. 467 (1900); *State v. Brushwood*, 171 S.W.3d 143 (Mo. App. W.D. 2005). Under these directives and as further set out herein, SCMCN is an "electrical corporation" that will own and operate "electric plant," an electric transmission line, for the sale of electricity to others and, thus, requires a CCN from the Commission for its proposed transmission facilities in Missouri.

14. For purposes of addressing the Commission's jurisdiction here, there is the 1968 Commission case involving Nixa. The Commission found Progressive

Industries, Inc. (“Progressive”) to be subject to its jurisdiction when Progressive began building a transmission line from Springfield to Nixa to provide electricity to the municipal distribution system in Nixa without having first obtained a CCN when The Empire District Electric Company (“Empire”) filed a Complaint. *Re The Empire District Electric Co., Complainant, vs. Progressive Industries, Inc.*, a corporation, Respondent, Case No. 16,447, *Report And Order*, 13 Mo.P.S.C.(N.S.) 659 (April 2, 1968). Empire was previously certificated by the Commission to provide retail electric service in Nixa by means of Empire’s generation, transmission, and distribution system. Empire’s municipal franchise expired in 1965 and Nixa constructed its own electric distribution system substantially completing it in 1967. Also in 1967, Progressive entered into a contract to sell and deliver and Nixa agreed to take and pay for all the electric power necessary for its municipal distribution system. Progressive petitioned for County and State Highway permits and franchises to install and maintain an electrical transmission line to provide for the electric power requirements for Nixa and the surrounding area. The source of the power was to be the Southwest Power Administration. Construction of the transmission line began on or about February 1, 1968 and continued until it was stopped by agreement of counsel for Progressive and Staff counsel while Empire’s Complaint was pending.

In its *Report And Order*, the Commission states, in part:

> Thus, whether [Progressive], by its activities in the construction of the electric transmission line in question, is **a public utility, that is a utility coupled with or affected with a public interest**, is the subject of the inquiry in the instant case. . . . [13 Mo.P.S.C.(N.S.) at 667; Emphasis added.]

* * * *

> . . . Without attaching any particular significance to the fact that the line under construction appears to be designed for a capacity far in excess of that required by the inhabitants of the City of Nixa now or in the foreseeable future, **we do find that such line is, and is intended to be, an important and necessary link in the sale, transmission and distribution of electrical energy** from Southwestern Power Administration facilities to consumers and users, the inhabitants of the City of Nixa, Missouri, who will receive such power. [13 Mo.P.S.C.(N.S.) at 668; Emphasis added.]
>
> * * * *
>
> We find that the City of Nixa, being a municipal corporation, is not a private corporation in the full legal sense even though it is invested by law with some of the attributes of such a corporation. In the instant case, the sale of electric energy by [Progressive] to the City of Nixa, for use by it and distribution to its inhabitants is not, and will not be, considered as service to a single customer. (Cf. Southern Okla. Power Co. v. Corporation Comm., 96 Okla. 53, 220 P. 370 (1923)) [13 Mo.P.S.C.(N.S.) at 670.]

In its *Report And Order*, the Commission found Progressive "a public utility whose present and projected activities are affected by and coupled with the public interest and that the jurisdiction of the Commission should and must be invoked." 13 Mo.P.S.C.(N.S.) at 671.

15. The Commission found Progressive to be an uncertificated public utility engaged in the construction, ownership, or control of an electrical transmission line contrary to and in violation of the provisions of Chapters 386 and 393; ordered and directed Progressive to cease and desist in the construction, ownership, or control of electrical transmission facilities contrary to and in violation of the provisions of Chapters 386 and 393; and authorized and directed the General Counsel to take any action necessary for the enforcement of the instant Order. 13 Mo.P.S.C.(N.S.) at 671. On March 1, 1968, apparently on its own motion, the Commission in Case No. 16,463 issued an Order directing the General Counsel to institute on behalf of the Commission

such legal proceeding or proceedings as he shall deem expedient and necessary to compel Progressive to comply with the provisions of the Public Service Commission Law, i.e., Progressive is constructing a power transmission line without first obtaining authority from the Commission to do so. On February 26, 1970 , the Commission issued an Order Of Dismissal respecting its Order issued on March 1, 1968 in the instant case on the basis that it had come to the Commission's attention that Progressive on January 16, 1969 forfeited its Certificate of Incorporation to the Missouri Secretary of State.

16. There is a case of note from Ohio regarding whether a corporation is operating as a public utility. *Industrial Gas Co. v. Ohio Public Util. Comm'n*, 21 N.E.2d 166 (S.Ct. Ohio 1939). On April 13, 1938, the Industrial Gas Co. filed with the Public Utilities Commission of Ohio ("Ohio Commission") an application to change the purpose clause of its articles of incorporation, withdraw its properties from service to domestic users of gas and to be declared not subject to the jurisdiction of the Ohio Commission on the ground that it was no longer a public utility. The Industrial Gas Co. operated approximately 50 miles of pipeline, served 19 industrial and twelve private customers under written contracts which stipulated the price to be paid for gas, but the Industrial Gas Co. did not hold itself out to serve either the public or the users of industrial gas generally and refused or failed to agree with, and did not serve certain industrial users of gas in its territory. The corporation supplying service did not hold itself out to serve the public generally. No proceedings of eminent domain / condemnation had ever been instituted to acquire property or right of way. The Ohio Commission found the Industrial Gas Co. was a public utility within the definition Ohio General Code, and denied the

Industrial Gas Co.'s application for a ruling that the Ohio Commission did not have jurisdiction. 21 N.E.2d at 166-67.

17. The Court held that the changed purpose clause of the charter did not of itself alter the real character of the Industrial Gas Co. business. The Court said it is what the corporation was doing, the nature of its operations, rather than the purpose clause, that determined whether the business had the element of public utility. 21 N.E.2d at 167-68. The Court held that the Industrial Gas Co. dedicated itself to the public utility service to such a degree on the part of a substantial public and within a substantial area so as to make its business a matter of a matter public concern, welfare and interest; for the Industrial Gas Co. to be a public utility and subject to regulation by the Ohio Commission. *Id*. at 167-68.

18. Recently, in File No. EA-2015-00145, In the Matter of the Application of Ameren Transmission Company of Illinois ("ATXI")[1] for a disclaimer of jurisdiction or in the alternative, a CCN relating to 7 miles of the 345 kV Illinois Rivers, the Commission issued a *Revised Order Granting Certificate of Convenience and Necessity* on July 22, 2015 ("*Revised Order*") after the ATXI filed an Application for Rehearing. In its Application, ATXI stated that it does not provide retail electric service to the general public in Missouri, does not serve any retail service territory in Missouri, and does not manufacture, sell or distribute electricity for light, heat or power either within or outside Missouri. The Commission in its *Revised Order* related that ATXI offered two

[1] In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri ("the first ATXI case for a CCN").

arguments against Commission jurisdiction. Those arguments appeared in ATXI's first Application for Rehearing, Paragraph 7, page 4 and Paragraphs 9-12, pages 5-6.

19. First, ATXI argued in its first Application for Rehearing that under *State ex rel. M.O. Danciger & Co. v. Public. Serv. Comm'n*, 205 S.W. 36 (Mo. 1918) (the "*Danciger Test"*) to be an electrical corporation under the jurisdiction of the Commission, the entity must serve or otherwise hold itself out to indiscriminately provide electric service to the general public at retail. In *Danciger*, the stock of the Royal Brewing Company in Weston, Mo. (whose stock was largely or wholly owned by M.O. Danciger (trading as M.O. Danciger & Co.) and his brothers) had its own private electric plant by which it ran its plant and provided electric service to certain residences and businesses in a three block radius from surplus electric service under the name M.O. Danciger & Co. Electric service was not provided to all who requested service and a complaint for reinstatement of service was made by a business for which service was terminated. The Commission held that ATXI was an electrical corporation building electric plant, stating at pages 5-6 of its July 22, 2015, *Revised Order*, as follows:

> In the words of the Missouri Supreme Court:
>
> > the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.[9]
> > ---
> > [9] *Danciger*, at 40.
>
> That then is the *Danciger* test; whether the electric plant has been devoted to the public use. Contrary to ATXI's assertion, there is no requirement that the alleged public utility indiscriminately provide electric service to the general public at retail.

> **Although ATXI will not be selling electricity at retail to the public, its application establishes that the electric transmission line it proposes to build and operate will be an integral link in the sale and distribution of electricity to the public.** In fact, the transmission line's importance to that public purpose is the basis for ATXI's claim that the line is needed. Under the circumstances, **the Commission finds that the electric transmission line that ATXI proposes to build will be dedicated to the public service and is subject to regulation by this Commission under the *Danciger* test**. [Emphasis added.]

20. Second, in its first Application For Rehearing, ATXI argued that the Illinois Rivers transmission line in Missouri is not subject to regulation by this Commission because the Commission's jurisdiction is limited to the intrastate operations of public utilities, citing Section 386.250(1), and the Commission's jurisdiction does not include utilities engaged only in interstate commerce, citing Section 386.030, *State ex rel. MoGas Pipeline, LLC v. Pub. Serv. Comm'n*, 366 S.W.3d 493, 498 (Mo. 2012), and Section 201 of the Federal Power Act ("FPA") (16 U.S.C. Section 824(b)). So the issue became whether the FERC, which generally regulates the interstate transmission of electricity, had preempted the Commission's state authority to regulate ATXI. The Commission noted that while FERC has authority over the transmission of electricity in interstate commerce, 16 U.S.C. Section 824(a)(1), it does not claim jurisdiction over the siting of transmission facilities and quoted from *Piedmont Envtl. Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009) that "[S]tates have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities." The Commission concluded that federal law does not preempt this Commission's authority to require ATXI to obtain permission, in the form of a CCN, before constructing electric plant in Missouri.

21. Finally, the Staff would note some of the language in the U.S. Supreme Court's decision in *New York v. F.E.R.C.*, 535 U.S. 1, 122 S.Ct. 1012, 152 L.Ed.2d 47 (2002). The State of New York, et al. questioned FERC's assertion of jurisdiction over unbundled retail transmissions and Enron Power Marketing, Inc. questioned FERC's refusal to assert jurisdiction over bundled retail transmissions. In Order No. 888, FERC ordered functional unbundling of wholesale generation and transmission services, imposed a similar open access requirement on unbundled retail transmission service in interstate commerce and declined to extend open access requirements to the transmission component of bundled retail sales. The Court noted that no petitioner questioned the validity of Order No. 888 as it applied to wholesales transactions. The disputes before the Court were over the proper scope of FERC jurisdiction over retail transmission transactions:

> . . . FERC has recognized that the States retain significant control over local matters even when retail transmissions are unbundled. See, *e.g.,* Order No. 888, at 31,782, n. 543 ("Among other things, Congress left to the States authority to regulate generation and transmission siting"); *id.,* at 31,782, n. 544 ("This Final Rule will not affect or encroach upon state authority in such traditional areas as the authority over local service issues, including reliability of local service; administration of integrated resource planning and utility buy-side and demand-side decisions, including DSM [demand-side management]; authority over utility generation and resource portfolios; and authority to impose nonbypassable distribution or retail stranded cost charges"). . . .

535 U.S. at 24, 122 S.Ct. at 1026.

> To remedy the wholesale discrimination it found, FERC chose to regulate all wholesale transmissions. It also regulated unbundled retail transmissions, as was within its power to do. See Part III, *supra.* However, merely because FERC believed that those steps were appropriate to remedy discrimination in the wholesale electricity market does not, as Enron alleges, lead to the conclusion that the regulation of *bundled* retail transmissions was "necessary" as well. Because FERC determined that the remedy it ordered constituted a sufficient response to the problems

> FERC had identified in the wholesale market, FERC had no § 206 obligation to regulate bundled retail transmissions or to order universal unbundling.

535 U.S. at 26-27, 122 S.Ct. at 1028; Footnote omitted.

WHEREFORE, the Staff files its response to the Commission's October 14, 2015 Third Order Extending Time To File Recommendation and states the Staff's recommendation is that the Commission has jurisdiction over SCMCN's Application and the Commission should schedule a prehearing conference for the parties and movant for intervention City Utilities to propose a procedural schedule, including evidentiary hearings.

Respectfully submitted,

/s/ Steven Dottheim
Steven Dottheim
Chief Deputy Staff Counsel
Missouri Bar No. 29149
P.O Box 360
Jefferson City, Missouri 65102
Phone: (573) 751-7489
Fax: (573) 751-9285
E-mail: steve.dottheim@psc.mo.gov

Nathan Williams
Deputy Staff Counsel
Missouri Bar No. 35512
Phone: (573) 751-8702
Fax: (573) 751-9285
E-mail: nathan.williams@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of November, 2015.

/s/ Steven Dottheim