

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20<sup>th</sup> day of July, 2016.

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

**ORDER GRANTING  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Issue Date: July 20, 2016

Effective Date: August 2, 2016

The Commission is granting the application of South Central MCN LLC (“SCMCN”) for a line certificate (“application”), subject to conditions, and making orders on related matters.

**Background**

SCMCN filed the application<sup>1</sup> seeking authorization to transmit electricity (“line certificate”) through approximately ten miles of 69kV transmission lines, and related facilities (“assets”).<sup>2</sup> SCMCN proposes no generation services, no distribution services, no service territory, and no new construction. SCMCN will have no retail customers and its terms of service will be subject to the Federal Energy Regulatory Commission.

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<sup>1</sup> EFIS No. 1 (August 19, 2015) *Application*.

<sup>2</sup> SCMCN also sought authorization to acquire the assets from the City of Nixa, Missouri (“transaction”) or, in the alternative, a ruling that no authorization is required. No authorization is required, the Commission ruled, because the City of Nixa is a municipal corporation whose disposal of assets is not subject to the Commission’s jurisdiction. EFIS No. 55 (February 10, 2016) *Order Granting Motion for Partial Disposition*.

## Procedure

The Commission's staff ("Staff") and the Office of the Public Counsel are parties to this action.<sup>3</sup> The Commission granted a motion to intervene from the City of Nixa, Missouri ("Nixa")<sup>4</sup> and a motion to intervene from the Board of Public Utilities of the City of Springfield, Missouri ("Springfield").<sup>5</sup> Staff's preliminary recommendation suggested a procedural schedule,<sup>6</sup> which the Commission ordered<sup>7</sup> as the parties proposed.<sup>8</sup>

Springfield filed a motion for summary determination against the line certificate,<sup>9</sup> but asked to withdraw that motion and waived hearing ("motion to withdraw"),<sup>10</sup> based on a *Joint Motion for Commission Approval of Settlement Agreement* ("joint motion").<sup>11</sup> Staff filed its recommendation in favor of granting the line certificate with conditions.<sup>12</sup> The Commission received no response to the recommendation, the motion to withdraw, or the joint motion within the time provided by order<sup>13</sup> and by regulation.<sup>14</sup> The settlement was deemed unanimous when no party filed an objection.<sup>15</sup>

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<sup>3</sup> 4 CSR 240-2.010(10).

<sup>4</sup> EFIS No. 12 (September 9, 2015) *Order Granting Intervention To The City Of Nixa*.

<sup>5</sup> EFIS No. 29 (November 10, 2015) *Order Granting Intervention to City Utilities of Springfield*.

<sup>6</sup> EFIS No. 23 (November 5, 2016) *Staff Recommendation that Commission Has Jurisdiction and Should Schedule Prehearing Conference for Parties to Propose Procedural Schedule Including Evidentiary Hearings*.

<sup>7</sup> EFIS No. 47 (December 22, 2015) *Order Setting Schedule and Terms of Discovery*.

<sup>8</sup> EFIS No. 39 (December 10, 2015) *Parties' Jointly Proposed Procedural Schedule*.

<sup>9</sup> EFIS No. 56 (February 12, 2016) *Motion for Summary Disposition*.

<sup>10</sup> EFIS No. 68 (May 3, 2016) *Waiver of Hearing and Motion to Withdraw Motion for Summary Disposition*.

<sup>11</sup> EFIS No. 66 (May 2, 2016) *Joint Motion for Commission Approval of Settlement Agreement*.

<sup>12</sup> EFIS No. 77 (June 23, 2016) *Staff Memorandum Recommendation*.

<sup>13</sup> EFIS No. 69 (May 3, 2016) *Order Requiring Filing of Recommendation and Responses*.

<sup>14</sup> 4 CSR 240-2.080(13).

<sup>15</sup> 4 CSR 240-2.115(2)(C).

No hearing is necessary to grant relief to which no party objects so, based on the verified filings,<sup>16</sup> the Commission independently finds and concludes as follows.

### Merits

SCMCN is a Delaware limited liability company with headquarters in Chicago, Illinois, and is authorized to do business in Missouri.<sup>17</sup> Generally, SCMCN's business plan includes providing transmission service to public entities within the territory of the Southwest Power Pool ("SPP"), including cooperatives and municipalities, which distribute electricity to their own retail customers.<sup>18</sup> Specifically in the application, SCMCN seeks authorization to transmit electricity through the assets, located in Christian and Greene Counties, which SCMCN has contracted to purchase from Nixa. Nixa currently uses these lines to transmit electricity from the Southwestern Power Administration and Springfield from Springfield's James River Plant to Nixa.<sup>19</sup>

The assets constitute electrical plant,<sup>20</sup> which makes the owner an electrical corporation,<sup>21</sup> a type of public utility<sup>22</sup> subject to the Commission's jurisdiction:

No [electrical] corporation shall exercise any right or privilege under any franchise hereafter granted . . . without first having obtained the permission and approval of the commission [. <sup>23</sup>]

Such permission and approval depend on SCMCN showing:

. . . that the granting of the application is required by the public convenience and necessity [, <sup>24</sup>]

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<sup>16</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Com'n*, 776 S.W.2d 494 (Mo. App., W.D. 1989).

<sup>17</sup> EFIS No. 1 (August 19, 2015) *Application*, page 2, paragraph 5.

<sup>18</sup> EFIS No. 1 (August 19, 2015) *Application*, first page, paragraph 1.

<sup>19</sup> EFIS No. 9, *Prepared Testimony of Robert E. Pender on Behalf of on Behalf of South Central MCN LLC* (August 21, 2015) page 2 to 3.

<sup>20</sup> Section 386.020(14), RSMo Supp. 2013.

<sup>21</sup> Section 386.020(15), RSMo Supp. 2013.

<sup>22</sup> Section 386.020(43), RSMo Supp. 2013.

<sup>23</sup> Section 393.170.2, RSMo 2000.

and the Commission determining:

. . . that . . . such exercise of the right, privilege or franchise is necessary or convenient for the public service [<sup>25</sup>]

Further, the Commission may condition its approval and permission as follows:

The commission may by its order impose such condition or conditions as it may deem reasonable and necessary [<sup>26</sup>]

On finding convenience and necessity, the Commission embodies its permission and approval in a certificate,<sup>27</sup> which the statutes call a certificate of convenience and necessity.<sup>28</sup>

“Necessary” and “necessity” relate to the regulation of competition, cost justification, and safe and adequate service.<sup>29</sup> SCMCN and Staff offer an analysis of convenience and necessity according to five factors, which are whether: (1) the service is needed; (2) the applicant is qualified to provide the service; (3) the applicant is financially able to provide the service; (4) the proposal is economically feasible; and (5) the service will promote the public interest.<sup>30</sup> No other party offers any alternative analysis and the Commission concludes that the five-factor analysis is appropriate. SCMCN argues that it meets those factors, and Staff agrees, subject to the conditions

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<sup>24</sup> 4 CSR 240-3.205(1)(E).

<sup>25</sup> Section 393.170.3, RSMo 2000.

<sup>26</sup> Section 393.170.3, RSMo 2000.

<sup>27</sup> Section 393.170.2, RSMo 2000, second sentence.

<sup>28</sup> Section 393.170.3, RSMo 2000, third sentence.

<sup>29</sup> *State ex rel. Intercon Sewer, Inc. v. Public Serv. Comm'n of Mo.*, 848 S.W.2d 593, 597 (Mo. App., W.D. 1993).

<sup>30</sup> SCMCN and Staff cite the Commission’s decision in *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994). Decisions of past commissions do not bind the Commission but may offer helpful analysis.

that Staff proposed in the recommendation. The Commission will grant the line certificate subject to the conditions set forth in the ordered paragraphs below.

SCMCN also asks for authorization to transfer functional control of the assets to the Southwest Power Pool (“SPP”) and to integrate the assets into the SPP transmission system. Staff agrees, and requests a yearly report on SCMCN’s membership in SPP, including SCMCN’s perspective on the economic viability of remaining in SPP. The Commission will grant those requests.

Further, specifically addressing SCMCN’s business plan, SCMCN and Staff discuss which of the Commission’s regulations apply to SCMCN’s line certificate. SCMCN and Staff agree that the following regulations apply:

4 CSR 240-3.180	Heat-related service, cold weather report
4 CSR 240-3.190(3)(E)	Report loss of transmission capability that could limit the output of a generating plant
4 CSR 240-3.190(4), (5)	Reports and updates regarding accidents
4 CSR 240-3.190(6), (7), (8), (9), (10)	Report specified events

SCMCN and Staff are correct and those regulations will apply to SCMCN. SCMCN also argues, and Staff agrees, that either the following regulations do not apply or the Commission should waive them:

4 CSR 240-3.105(1)(A), (B)1, 2, 3	Service area and new construction
4 CSR 240-3.115	Authority to merge or consolidate
4 CSR 240-3.120	Application for financing
4 CSR 240-3.145	Filing of tariffs
4 CSR 240-3.165	Fuel and purchased power cost recovery
4 CSR 240-3.175	Depreciation studies
4 CSR 240-3.190(1), (2), (3)(A), (B), (C), (D)	Report other specified events

SCMCN and Staff are correct. The Commission will waive those regulations.

In the joint motion, SCMCN, Nixa, and Springfield also ask the Commission to approve their *Settlement Agreement*. The Commission will incorporate the settlements' provisions into this order either as the Commission's ruling or, for those

matters to which the parties agreed but on which Commission has no authority to order, as the Commission's consent order.

Granting the joint motion is the premise of Springfield's motion to withdraw, which no party opposes, so the Commission will grant the motion to withdraw.

**THE COMMISSION ORDERS THAT:**

1. The application of South Central MCN LLC ("SCMCN") for a line certificate of convenience and necessity is granted subject to the following conditions.

- a. SCMCN shall file documents that verify that the assets described in the body of this order will be in Southwestern Power Administration pricing zone 10 of the Southwest Power Pool, Inc. ("SPP") per the terms of the *Settlement Agreement* reached among SCMCN; the City of Nixa, Missouri; and Board of Public Utilities of the City of Springfield, Missouri ("Springfield").
- b. SCMCN shall file the following five exhibits that are designated as "Draft to be attached no later than 30 days from the Effective Date" in the *Application*, Appendix A, Asset Purchase Agreement:
  - i. Exhibit A: Interconnection Assignment Agreement;
  - ii. Exhibit F: Transition Services Agreement;
  - iii. Exhibit G: Pole Attachment Agreement;
  - iv. Exhibit H: Transmission Services Agreement; and
  - v. Exhibit I: Lease and Access Agreement.
- c. SCMCN shall follow the construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management that is attached to the *Staff Memorandum Recommendation*.

- d. SCMCN shall file the agreement regarding system control services with Springfield when finalized, or the agreement with the alternative provider of system control services if the current plan to use Springfield does not occur.
- e. SCMCN shall file the agreement regarding operation and maintenance services with BBC Electrical Services, Inc. (“BBC”), or the agreement with the alternative provider of operation and maintenance services if the current agreement to use BBC is not fulfilled.
- f. Beginning January 1, 2017 and every year thereafter on January 1, until otherwise ordered by the Commission, SCMCN shall file a report with the Commission concerning its membership in SPP. Such report shall include the perspective of SCMCN on the economic viability of remaining in SPP.
- g. When SCMCN files any annual report with the Federal Energy Regulatory Commission, SCMCN shall concurrently file that annual report with the Commission.

2. SCMCN is authorized to transfer functional control of the assets to SPP and to integrate the assets into the SPP transmission system.

3. Regulations in 4 CSR 240-3 shall apply, or are waived, as set forth in the body of this order.

4. The *Joint Motion for Commission Approval of Settlement Agreement* is granted. The *Settlement Agreement* described in the body of this order is incorporated into this order by reference as if set forth at length, either as the Commission's ruling or as a consent order, as described in the body of this order.

5. The motion to withdraw the *Motion for Summary Determination* is granted.
6. This order shall be effective on August 2, 2016.
7. This file may close after August 2, 2016.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Jordan, Senior Regulatory Law Judge



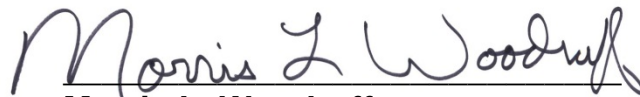
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS** my hand and seal of the Public Service Commission,  
at Jefferson City, Missouri, this 20<sup>th</sup> day of July 2016.



  
Morris L. Woodruff  
Secretary

**MISSOURI PUBLIC SERVICE COMMISSION**

**July 20, 2016**

**File/Case No. EA-2016-0036**

**Missouri Public Service Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large initial "M".

**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.