

**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 MEMORANDUM RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and submits its Memorandum Recommendation to the Missouri Public Service Commission that the Commission, pursuant to Section 393.170 RSMo., conditionally grant South Central MCN LLC (“SCMCN”) a certificate to exercise any right or privilege under any franchise heretofore granted as is necessary or convenient for the public service (certificate of convenience and necessity or “CCN”), respecting approximately ten miles of 69kV electric transmission lines and related facilities located in Christian and Greene Counties presently owned by the City of Nixa, Missouri (“Nixa”). The Staff is filing its Staff Memorandum Recommendation pursuant to the Commission’s June 2, 2016, Order Extending Time To File, which the Commission issued in response to the Staff’s June 1, 2016, Motion For Additional Time To File Staff Recommendation and the Staff’s Motion For Extension Of Time filed on June 22, 2016. In support of the attached Staff Memorandum 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 and related facilities to

SCMCN by the 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 assets and related facilities”). 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 Federal Energy Regulatory Commission (“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. On August 21, 2015, SCMCN filed the Direct Testimony of Edward M. Rahill, President and Chief Executive Officer of GridLiance Heartland, LLC, and Robert E. Pender, President of R.E. Pender, Incorporated on behalf of SCMCN. Mr. Rahill in his Direct Testimony at page 3, line 1 states SCMCN is managed by a small team of experienced utility executives and staff. Mr. Rahill explains in his Direct Testimony at page 1, lines 11-14 that prior to SCMCN, he was the principal of Grid Capital Advisors, a private consulting firm, and that from April 2009 to February 2011 he was President of ITC Grid Development, LLC (“ITC Grid”) and Senior Vice President of ITC Holdings, Inc. (“ITC”), where I managed the transmission development activities for ITC, including the start-up of ITC Great Plains, LLC, an independent Transco operating in SPP. The purpose of Mr. Rahill’s Direct Testimony is to discuss the formation and business strategy of SCMCN and its financing partner. The purpose of Mr. Rahill’s Supplemental Direct Testimony is to address the financial qualification of SCMCN and its financing partner, the economic feasibility of SCMCN’s purchase and operation of the Nixa Assets, why granting SCMCN a CCN to operate the Nixa Assets promotes the public interest, and to offer into evidence the First Amendment To The Asset Purchase Agreement. On February 18, 2016, SCMCN filed a Motion for Any Necessary Leave to File Additional Supplemental Direct Testimony of Edward M. Rahill which comprised a motion and additional supplemental direct testimony.

5. Mr. Pender explains in his Direct Testimony filed on August 21, 2015, that he has been employed over thirty-five (35) years in the electric utility industry, primarily

in the areas of utility appraisal and valuation, among others; at Public Service Company of Indiana (now Indiana Duke) for nine (9) years and at R.W. Beck for nineteen (19) years. The purpose of Mr. Pender's Direct Testimony is to support the estimated original cost less depreciation value of the transmission assets of Nixa proposed to be acquired by SCMCN and included as part of the SPP transmission rates. The purpose of Mr. Pender's Supplemental Direct Testimony is to relate that SCMCN and Nixa agreed to the transfer of significantly more land than what was originally contemplated in the purchase of the Nixa Assets. By agreement, Nixa will transfer ownership of approximately 97 acres of land and land rights at a total price of \$1.052 million.

6. 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 the City of Springfield, Missouri, Board of Public Utilities ("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 "[a]t 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.

7. 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).

8. 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. (See Paragraph 23 below.)¹

9. SCMCN's Chief Operating Officer Noman L. Williams' Direct Testimony filed on December 10, 2015 in File No. EA-2016-0036 states on page 8, lines 7-13 his belief that SCMCN and City Utilities would come to agreement such that City Utilities would agree to continue to provide system control services, but SCMCN had an alternative plan if SCMCN was, like with O&M services, unable to reach final agreement with City Utilities. Mr. Williams said SCMCN had identified other utilities in the area, which he understood would provide the system control services if City Utilities chose not to do so, until such time that SCMCN's control center was up and operating. In response to Staff Data Request No. 10, which asked for the identification of the entity that will provide system control services after the closing on the transaction, SCMCN responded on May 31, 2016:

SCMCN has every reason to believe that CU will enter into an agreement to provide the system control services. However, SCMCN has determined that there are numerous other entities which would be able to provide those services and, upon notice from CU that it is discontinuing or declining to provide the system control services, SCMCN would work to put an agreement in place with another entity.

10. In response to Staff Data Request No. 8, SCMCN related that on November 3, 2015, BBC Electrical Services, Inc. entered into an agreement with

¹ Mr. Edward M. Rahill states in his Additional Supplemental Direct Testimony filed on February 18, 2016, at page 1, lines 18- 21 that "[t]he initial plan was that the assets being purchased from Nixa (Assets) be placed in the City Utilities of Springfield (CU) transmission pricing zone under the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (OATT) only for a short period – ending as soon as next year and in any event in less than five years." At page 2, lines 3 - 6 of his Additional Supplemental Direct Testimony, he relates that "[t]o narrow the issues in this contested proceeding and improve the opportunity for settlement, SCMCN and Nixa have agreed to condition closing on completion of the arrangements for the Assets to be placed in the SWPA zone. This delays the Transaction, but eliminates the rate impact on CU that would occur if the Assets were included in the CU zone."

SCMCN to provide operation, maintenance and repair services that City Utilities currently provides for the transmission and related facilities. SCMCN also related:

. . . Further, SCMCN and BBC met on May 10, 2016 to review the O&M and emergency restoration services agreements and timing for GridLiance for the transmission facilities. BBC reaffirmed their desire and commitment to begin such services once all approvals are completed. In addition, SCMCN continues to discuss with CU whether CU would prefer to provide the services.

11. Section 393.170 provides:

1. **No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.**

2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, **without first having obtained the permission and approval of the commission. Before such certificate shall be issued** a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that **such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.** Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void. [Emphasis added.]

12. On November 5, 2015, the Staff filed this proceeding a Recommendation That Commission Has Jurisdiction And Should Schedule Prehearing Conference For Parties To Propose Procedural Schedule Including Evidentiary Hearings. On November 6, 2015, the Commission issued an Order Directing Filing in which it ordered

the Staff to coordinate the obtaining of a proposed date from the parties for a prehearing conference for the purpose of drafting a proposed procedural schedule, and to file that date by November 13, 2015. On that date, the Staff filed its Response To Commission Order Regarding Proposed Date For Prehearing Conference. On November 16, 2015, the Commission issued an Order Setting Scheduling Conference in which it set December 2, 2015 as the date of the scheduling conference.

13. A scheduling conference was held by the parties on December 2, 2015 and on December 10, 2015, the parties filed a Jointly Proposed Procedural Schedule. Among other things, the Jointly Proposed Procedural Schedule provided for the filing of (a) additional direct testimony by SCMCN and (b) a Motion for Partial Summary Disposition by SCMCN, responses, and replies by other parties and SCMCN, and a possible decision by the Commission on the Motion before hearings.

14. On December 10, 2015, SCMCN filed the Supplemental Direct Testimony of Robert E. Pender and Edward M. Rahill and the Direct Testimony of the Carl A. Huslig and Noman L. Williams. On February 18, 2016, SCMCN filed a Motion for Any Necessary Leave to File Additional Supplemental Direct Testimony of Edward M. Rahill which comprised a motion and additional supplemental direct testimony. Mr. Huslig has over twenty (20) years of experience as a utility executive at Aquila, Inc. and ITC Great Plains, ITC Holdings Corp, Huslig Consulting and GridLiance Heartland LLC. The purpose of his Direct Testimony is to provide information concerning the economic feasibility of the purchase of assets from Nixa and how granting a CCN to SCMCN to operate the assets promotes the public interest. Mr. Williams who is trained as an engineer is Senior Vice President of Engineering and Operations and Chief Operating

Officer of GridLiance Heartland LLC. He was at Avista Energy in Spokane, Washington for seven (7) years and at Sunflower Power Electric Corp., Hays, Ks. for twenty-six (26) years. The purpose of his testimony is to address the need for the assets, SCMCN's qualification to operate and maintain the assets and how granting a CCN to SCMCN to operate the assets promotes the public interest.

15. On December 18, 2015, SCMCN filed a Motion For Partial Disposition and a Memorandum in Support Of Motion For Partial Disposition. On January 15, 2016, City Utilities filed City Utilities Response In Opposition To SCMCN Motion For Partial Disposition and Memorandum Of City Utilities Of Springfield, Missouri In Opposition To Motion Of SCMCN For Partial Disposition. Also on January 15, 2016, the Staff filed its Response To SCMCN Motion For Partial Disposition, asserting as the Staff had in its November 5, 2015, Recommendation That Commission Has Jurisdiction And Should Schedule Prehearing Conference For Parties To Propose Procedural Schedule Including Evidentiary Hearings that the Commission has jurisdiction in EA-2016-0036 pursuant to Section 393.170 RSMo. but not pursuant to Section 393.190 RSMo. On January 22, 2016, SCMCN filed its Memorandum In Support Of Motion For Partial Disposition. On February 10, 2016, the Commission issued an Order Granting Motion For Partial Disposition and dismissed any claim under Section 393.190.1 RSMo Supp. 2013.

16. On February 12, 2016, City Utilities filed a Motion For Summary Disposition and a Memorandum In Support Of Motion For Summary Determination. On February 19, 2016, SCMCN filed a Motion To Suspend Procedural Schedule and on that same date the Commission issued an Order Suspending Schedule. On

May 2, 2016, a Settlement Agreement was filed by SCMCN, Nixa, and City Utilities as an Attachment to their Joint Motion For Commission Approval Of Settlement Agreement.

17. SCMCN comments in Paragraph 5, page 2 of its Application that it is a limited liability company organized under the laws of the state of Delaware; its sole member is GridLiance Heartland LLC; and GridLiance Heartland LLC's sole member is GridLiance Holdco, LP, a Delaware limited partnership that is largely owned by Blackstone Group investment entities ("Blackstone").² Edward Rahill notes in his Direct Testimony at page 3, lines 10-13 that Blackstone includes Blackstone Power & National Resources Holdco LP (on behalf of Blackstone Capital Partners VI LP and Blackstone Energy Partners LP, and/or any successor funds). Blackstone's ownership and control of GridLiance HoldCo is evidenced in the Amended and Restated Limited Partnership Agreement of GridLiance Holdco, LP, which is attached as Appendix F-3 to SCMCN's Application. (Rahill Direct Testimony at page 3, lines 13-15).

18. When SCMCN filed its Application on August 19, 2015, it sought the Commission's and FERC's necessary approvals by October 30, 2015, in order to allow SCMCN and Nixa to consummate the transaction effective December 1, 2015. SCMCN's Application stated, in part, at Paragraph 14, page 5:

The target effective date is December 1, 2015.⁴ If necessary approvals are not obtained by that time from the Commission and FERC, closing will occur on the first day of the calendar month following the date on which all of the necessary approvals are obtained. [Emphasis added.]

⁴ SPP requires that the charges be implemented on the first of a month.

² According to Mr. Rahill's Direct Testimony at page 1, lines 5-7 and page 3, lines 3-4, Midcontinent MCN, LLC ("MMCN") is a sister transmission company ("Transco"), its sole member is GridLiance Heartland LLC, and it will operate in the MISO region, and will be filing for similar approvals with FERC in the near future.

19. SCMCN and SPP have executed the SPP Membership Agreement. SCMCN will execute SPP's standard functional control agreement by which SCMCN and SPP will agree to transfer the transmission assets to the functional control of SPP and to integrate the transmission assets into the SPP transmission system. SCMCN states at Paragraph 13, page 4:

. . . Because the transmission assets will be owned by a transmission-only company with no retail customers, FERC will have jurisdiction over the rates, terms and conditions of service over the transmission assets, while this Commission will retain certain other jurisdiction over SCMCN.³

³ For example, the Commission will retain jurisdiction over SCMCN for purposes of the requirement at 4 CSR 240-3.180 to submit a heat-related service cold weather report; the requirement at 4 CSR 240-3.190(3)(E) to report loss of transmission capability that could limit the output of a generating plant; and the requirement at 4 CSR 240-3.190(4)&(5) to submit reports and updates regarding accidents.

SCMCN states in its Application, Paragraph 4, page 3, and Paragraph 21, page 7, that effective with the acquisition, through SCMCN's FERC-approved forward-looking formula-based rate SCMCN will receive its just and reasonable cost of service, which is its annual transmission revenue requirement ("ATRR"). SCMCN's ATRR will be collected by SPP from applicable transmission customers and remitted by SPP to SCMCN as provided in the SPP Tariff. SCMCN relates in its Application at Paragraph 4, page 2 and Paragraph 14, page 5 that the cost-of-service of the transmission assets will be recovered through a FERC-approved SPP regional transmission tariff.

20. SCMCN states at Paragraph 25, page 8 of its Application that it will not require any franchises, consents, or additional approvals from Nixa or from any other municipalities, counties, or governmental bodies in connection with the proposed transaction.

21. SCMCN relates in Paragraph 28, page 9 of its Application that on November 12, 2014, SPP notified SCMCN that it is a Qualified Request for Proposal Participant qualified to compete for construction and operation of new, high-voltage transmission facilities in SPP. SCMCN states that the SPP qualifying process requires submission of substantial documentation as to an applicant's financial resources and planning, construction, and operating capabilities. This process would be pursuant to SPP's transmission owner selection process under FERC Order No. 1000's removal of the federal right of first refusal for certain transmission projects.³

22. The Staff obtained a SPP map (Attachment No. 1) of pricing zones and put together two tables (Attachment No. 2 and HC Attachment No. 3) that the Staff believes help show the progression of the terms of the Asset Purchase Agreement ("APA") in this case and how they have evolved. Although Attachment No. 1 is a SPP map showing the SPP pricing zones, unfortunately the SPP pricing zones are not numbered on the map, but they are color coded. City Utilities pricing zone 3 is the blue area on the map where the City of Springfield should be in Missouri and is identified in the Table in the bottom left-hand corner of the page by the letters / abbreviation "SPRM". Southwestern Power Administration pricing zone 10,⁴ in the States of Missouri, Arkansas, and Oklahoma, is the lightest of the three shades of green on the map, in the lower third along the right-hand side of the map, and is identified in the Table in the bottom left-hand corner of the page by the letters / abbreviation "SPA." Attachment No. 2 summarizes certain terms agreed to over time by SCMCN and Nixa and found in

³ FERC Order No. 1000 removed the incumbent transmission owner's federal right of first refusal to construct regional transmission facilities. The focus was regional transmission, not local transmission.

⁴ Southwestern Power Administration is otherwise abbreviated in this pleading "SWPA."

(a) the APA (and explained by SCMCN's response to Staff Data Request No. 16); (b) Mr. Rahill's Supplemental Direct Testimony filed on December 10, 2015, i.e., a copy of the First Amendment (August 14, 2015) To Asset Purchase Agreement (August 14, 2015), attached as Exhibit No. EMR-8; (c) Mr. Rahill's Additional Supplemental Direct Testimony filed on February 18, 2016, i.e., a copy of the Second Amendment (February 12, 2016) To Asset Purchase Agreement, attached as Exhibit EMR-1; and (d) the Settlement Agreement (April 28, 2016) filed on May 2, 2016 by SCMCN, Nixa, and City Utilities, attached to their Joint Motion For Commission Approval Of Settlement Agreement.

23. Highly Confidential Attachment No. 3 addresses (a) a condition precedent (a closing condition) and (b) a subsequent impact event (a condition subsequent) both negotiated as part the Settlement Agreement among City Utilities, SCMCN, and Nixa.

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24. The Staff asked in Data Request No. 19 whether SWPA was supportive of the purchase of the Nixa assets and related facilities. SCMCN responded that it was not aware of SWPA expressing a formal position or opinion of support or opposition to the purchase of the Assets. As far as placing the Nixa assets and related facilities in SWPA pricing zone 10, SCMCN state as follows:

. . . As for placement of the Assets into Zone 10, SWPA has not expressed a formal position or opinion of support or opposition. Numerous and ongoing positive and productive discussions have occurred between SCMCN and SWPA regarding the integration of the Assets into Zone 10. SCMCN continues to work with SWPA and the SPP regarding the placement of the Assets into Zone 10 and would be willing to keep the Commission updated of any material changes to the progress of such discussions.

25. Mr. Huslig states in his Direct Testimony at page 6, lines 18-20 that “[t]here will be a ‘cost shift’ to someone any time an asset is included in a ‘multi-owner’ zone under SPP rules, unless the load ratio share percentage of the transmission owner that is adding the asset to the zone exactly equals the percentage that the new asset represent of total ATRR.” The Staff asked in Staff Data Request No. 21 whether Mr. Huslig’s statement applied to the inclusion of the Nixa transmission assets and related facilities in pricing zone 10. SCMCN responded, in part, as follows:

Yes, there will be changes in cost allocations for transmission charges when Nixa’s assets are added to Zone 10. . . . The placement of the Nixa Assets into SPP Zone 10 will require a filing with FERC by SPP that will

address, among other things, the resulting rates to be charged in Zone 10.
...

Further, it is not possible at this time to accurately estimate how rates for Zone 10 will change due to adding the Assets to Zone 10 which will directly affect the SPP Zone 10 rates. . . .

It is known that the impacted customers will be cooperatives and municipalities. . . .

Irrespective, as noted, the change in cost allocation is the result of placing the Assets into SPP, and into an existing SPP transmission owner zone (which has occurred in several other SPP transmission owner zones to date by SPP), and not of SCMCN's purchase of the Assets. The rate impact of the change in ownership is limited to the difference in capital costs between a municipal utility like Nixa and a for-profit stand-alone transco like SCMCN.

26. SCMCN explains in Paragraph 23, pages 7-8 of its Application that its business model is solely focused on the provision of transmission services. SCMCN asserts in Paragraph 2, page 2 and Paragraph 23, page 7 of its Application that “[t]he Transaction will create value for Missouri transmission customers in the areas of improved reliability, financial strength, and operational excellence of the transmission system.” SCMCN states at Paragraph 23, page 7 of its Application that the proposed transaction is not detrimental to the public interest, noting at footnote 7, page 7 of its Application that the “[p]romotion of the public interest is also a factor considered by the Commission under 4 CSR 240-3.105(1)(E) in determining whether to grant a CCN . . .”

27. The Missouri Supreme Court in *Public Serv. Comm'n v. Kansas City Power & Light Co.*, 325 Mo. 1217, 31 S.W.2d 67 (1930), held that an extension of an existing transmission line, not authorized by an existing CCN, required a new CCN from the Commission. In that case the Commission sought, and obtained an injunction against KCP&L from operating or using a six-mile extension of one of its transmission

lines. KCP&L had a CCN from the Commission for the transmission line, but not the extension. It is noteworthy that KCP&L was then a vertically integrated electric utility, and the Court spoke in its opinion about the potential impacts not only on existing utility customers of a utility extending its transmission lines, but also of the utility's wherewithal to make the extension. The Supreme Court affirmed the circuit court and held the Commission had authority under the statute now codified at Section 393.170, RSMo., to condition a CCN to assure the transmission line provides adequate and efficient service to the public without injuring the operation of telephone lines.

28. That public utilities do not seek new CCNs for every transmission line and transmission line extension is due to the Commission taking the approach in the 1930's of granting blanket certificates. That approach began in 1934 with the Commission's *Report and Order in Re Kansas City Power & Light Co.*, 21 Mo.P.S.C. 1 (1934). In that *Report and Order*, the Commission granted KCP&L "authority to construct, reconstruct, locate, relocate, maintain and operate electric transmission lines along, over, and across the highways of the Counties of Jackson, Clay, Cass, Platte, Carroll, Chariton, Howard, Lafayette, Pettis, Randolph and Saline, and along such other routes as may be properly provided in said counties, all in the State of Missouri, with authority to furnish electric service to all persons in the area for which this certificate is granted, such area being more fully described by the maps filed herein by this Applicant" *Id.* at 6.

29. Because SCMCN is a company that proposes to own, operate, control or manage electric plant operated, controlled, owned, used or to be used for or in connection with or to facilitate the transmission of electricity, it must be granted a CCN

before it can proceed with the project detailed in its *Application*. Sections 386.020(14) and (15), RSMo. Cum. Supp. 2013

30. Section 393.170 RSMo., in particular subsections 393.170.2 and 3, address the standard by which SCMCN's *Application* for a CCN may be approved. Section 393.170 in its entirety was set out in paragraph 11 above.

31. In this case, granting a CCN to SCMCN must be based on a showing that it is necessary or convenient for the public service for SCMCN to own, operate, and maintain certain electric transmission facilities. In the July 22, 2015, *Revised Order* in the File No. EA-2015-0145, the first ATXI case for a CCN, the Commission cited page 7 *In Re Tartan Energy Co.*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994). In this 1994 case, the Commission commented that “[a]lthough there is a dearth of statutory guidance, the Commission has articulated “the criteria to be used in evaluating such applications in *Re Intercon Gas, Inc.*, 30 Mo.P.S.C.(N.S.) 554, 561 (1991).” The Commission stated that the *Intercon* case combined the standards used in several similar CCN cases, and set forth the following criteria for deciding whether to grant Tartan Energy a CCN to provide retail gas service in a number of southern Missouri counties:

- 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. *Id.*

In the *Tartan Energy* case, the Commission explained that the Commission first stated these five factors in *Re Intercon Gas, Inc.*, 30 Mo.P.S.C.(N.S.) 554 (1991), where the Commission canvassed a number of certificate cases and distilled the criteria for a CCN

into these five factors for purposes of deciding whether, and to whom, to grant a CCN for an intrastate natural gas pipeline. Intercon Gas, Inc. (“Intercon”), Missouri Gas Co. (“MoGas”), Missouri Pipeline Co. (“MPC”), and Laclede Gas Co. (“Laclede”) applied to the Commission for CCNs for various gas plant operations. MoGas, MPC and Laclede were awarded CCNs and Intercon was denied a CCN. Circuit Court affirmed and appeal was taken.

32. In *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm’n*, 848 S.W.2d 593, 597-98 (Mo. App. 1993)(Emphasis supplied), the Western District Court of Appeals held as follows:

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.” Section 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. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. *State ex rel. Public Water Supply Dist No. 8 v. Public Service Comm’n*, 600 S.W.2d 147, 154 (Mo. App. 1980). **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.** *Id.* at 392.

33. The attached Staff Memorandum Recommendation concludes that SCMCN meets the criteria that the Commission has adopted for determining whether to grant a CCN when it has the authority to do so, which it does in this case, and the Staff Memorandum Recommendation and this Staff Recommendation show that the granting

of the SCMCN Application for a CCN is required by the public convenience and necessity.

34. The Staff finds that there is a need for the proposed service.

35. The Staff finds that SCMCN is qualified to provide the proposed service.

36. The Staff finds that SCMCN has the financial ability to provide the service.

37. The Staff finds that SCMCN's proposal is economically feasible.

38. The Staff finds that SCMCN's proposed service promotes the public interest.

39. Appendix A to the Application of SCMCN is the Asset Purchase Agreement ("APA"). There are five (5) pages in Appendix A that are blank of content, which serve as placeholders, and have printed on them "Draft to be attached no later than thirty (30) days from the Effective Date." The APA states "1.1.24 *Effective Date* Effective Date is defined in the introductory paragraph of this Agreement." The introductory paragraph indicates that the effective date is the August 14, 2015, execution date of the APA. The aforementioned five (5) pages are individually labeled: Exhibit A - Interconnection Assignment Agreement; Exhibit F - Transition Services Agreement; Exhibit G - Pole Attachment Agreement; Exhibit H: - Transmission Services Agreement; and Exhibit I - Lease and Access Agreement. The Staff asked in Data Request No. 11 the status of these documents. SCMCN responded as follows: "Exhibits A, F, G, H and I are still being finalized by the parties to the APA and will be provided to the Commission as soon as they are available in final form."

40. At Paragraph 36, page 12 of its Application, SCMCN offers/agrees to file with the Commission the annual report that it files with the FERC. The Staff concurs

with SCMCN's request that the Commission grant SCMCN a waiver from the requirements of 4 CSR 240-3.105(1)(A) Service Area Information and (1)(B).1-3 Construction Information (Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity)⁵; 4 CSR 240-3.115 Filing Requirements for Electric Utility Applications for Authority to Merge or Consolidate; 4 CSR 240-3.120 Filing Requirements for Electric Utility Applications for Authority to Issue Stocks, Bonds, Notes, and Other Evidences of Indebtedness; 4 CSR 240-3.145 Filing Requirements for Electric Utility Rate Schedules; 4 CSR 240-3.165 Annual Report Submission Requirements for Electric Utilities; 4 CSR 240-3.175 Submission Requirements for Electric Utility Depreciation Studies; 4 CSR 240-3.190(1), (2), and (3)(A)-(D) Reporting Requirements for Electric Utilities and Rural Electric Cooperatives; and 4 CSR 240-4.020(2) 60-Day Contested Case Notice Requirement (Ex Parte and Extra-Record Communications). The Staff also concurs with SCMCN's statement at Paragraph 13, footnote 3, page 4 of its Application that the requirements of: 4 CSR 240-3.180 to submit a heat-related service cold weather report; 4 CSR 240-3.190(3)(E) to report loss of transmission capability that could limit the output of a generating plant; and at 4 CSR 240-3.190(4) and (5) to submit reports and updates regarding accidents will apply to SCMCN. The Staff recommends that the Commission find that 4 CSR 240-3.190(6) -

⁵ Attached to SCMCN's Application are the following appendices: Appendix A – Asset Purchase Agreement; Appendix B – Certificate of Registration SCMCN; Appendix C – One-Line Drawing of Assets; Appendix D – Maintenance Agreement Between City Utilities of Springfield and Nixa; Appendix E – Board of Directors Authorizing Execution of APA (Secretary's Certificate); Appendix F1 – Pro Forma Balance Sheet and Income Statement; Appendix F2 – Bonding Indication Letter Committing to Issuing Surety Bond Meeting SPP's Financial Criteria; Appendix F3 – Amended and Restated Limited Partnership Agreement of GridLiance Holdco, LP, evidencing Blackstone's Ownership of SCMCN; Appendix F4 – Amended and Restated Limited Liability Company Agreement of GridLiance Heartland LLC authorizing GridLiance Holdco, LP to Make Capital Contributions to GridLiance Heartland LLC; Appendix 5 – Amended and Restated Limited Liability Company Agreement of South Central MCN LLC Authorizing GridLiance Heartland LLC to Make Capital Contributions to SCMCN

(10) the reporting requirements and procedures for the reporting of certain events should also apply to SCMCN.

41. The Staff concurs with SCMCN's request that the Commission authorize SCMCN to (a) transfer functional control of the transmission assets to SPP and (b) integrate the transmission assets into the SPP transmission system. The Staff further requests that the Commission order SCMCN beginning October 1, 2016, and every year thereafter on October 1 until otherwise ordered by the Commission, to file a report with the Commission concerning its membership in SPP. Such report should include the perspective of SCMCN in the economic viability of remaining in SPP.

42. The Staff concurs with SCMCN's request that the Commission grant a new CCN to SCMCN to own, operate, control, manage, and maintain the transmission assets and related facilities being transferred as part of the transaction with Nixa and that the new CCN being granted to SCMCN is a line CCN and not an area CCN. SCMCN does not propose to construct new transmission lines (Paragraph 34, pages 10-11, Application).

43. The Staff concurs with SCMCN's request that the Commission grant the relief requested but the granting of relief should be conditioned upon SCMCN filing complete and executed copies of the incomplete and unexecuted documents that are attached or for which there are placeholders attached to SCMCN's Application.

44. The Staff Memorandum Recommendation also requests that the Commission condition the granting of a CCN on SCMCN agreeing to follow certain construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management.

45. The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

WHEREFORE, the Staff submits its *Staff Memorandum Recommendation* that the Commission conditionally grant South Central MCN LLC a line certificate for the Nixa assets and related facilities, pursuant to the following conditions, i.e., the CCN granted by the Commission is not effective until conditions 1, 2, 3, and 4 are met by SCMCN. The Staff understands that conditions 5, 6, and 7 have a prospective element to them.

1. SCMCN files documents which verify that the transmission assets and related facilities that are the subject of the SCMCN Application will be in Southwestern Power Administration ("SWPA") pricing zone 10 of the Southwest Power Pool, Inc. ("SPP") per the terms of the Settlement Agreement reached among SCMCN, Nixa, and City Utilities.
2. SCMCN files the five (5) Exhibits that are designated as "Draft to be attached no later than thirty (30) days from the Effective Date" in the Asset Purchase Agreement ("APA"), Appendix A to the Application. These five (5) Exhibits are Exhibit A: Interconnection Assignment Agreement; Exhibit F: Transition Services Agreement; Exhibit G: Pole Attachment Agreement; Exhibit H: Transmission Services Agreement; and Exhibit I: Lease and Access Agreement.
3. SCMCN files the agreement regarding system control services with City Utilities when finalized or the agreement with the alternative provider of system control services if the current plan to use City Utilities does not occur.
4. SCMCN files the agreement regarding operation and maintenance services with BBC Electrical Services, Inc. or the agreement with the alternative provider of operation and maintenance services if the current agreement to use BBC Electrical Services, Inc. is not fulfilled.

5. The Commission orders that SCMCN, beginning January 1, 2017 and every year thereafter on January 1, until otherwise ordered by the Commission, files a report with the Commission concerning its membership in SPP. Such a report should include the perspective of SCMCN on the economic viability of remaining in SPP.

6. In Paragraph 36, on page 12 of its Application, SCMCN offers/agrees to file with the Commission the annual report that it files with the FERC. The Commission directs SCMCN to file with the Commission the annual report that it files with the FERC at the time it makes its filing with the FERC. The Commission directs that SCMCN comply with the requirements and procedures under: (a) 4 CSR 240-3.180 to submit a heat-related service cold weather report; (b) 4 CSR 240-3.190(3)(E) to report loss of transmission capability that could limit the output of a generating plant; (c) 4 CSR 240-3.190(4) and (5) to submit reports and updates regarding accidents; and (d) 4 CSR 240-3.190(6) - (10) to report certain other events covered therein.

7. The Commission direct SCMCN to follow the construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management that is attached to the Staff Memorandum Recommendation.

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim

Chief Deputy Staff Counsel

Missouri Bar No. 29149

Attorney for the Staff of the

Missouri Public Service Commission

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Staff Memorandum Recommendation* have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 23rd day of June, 2016.

/s/ Steven Dottheim

MEMORANDUM

TO: Missouri Public Service Commission Official Case File - Case No. EA-2016-0036, In the Matter of the Application of South Central MCN LLC for Approval of Transfer of Assets and Certificate of Convenience and Necessity

FROM: Daniel I. Beck, PE, Engineering Analysis
David Murray, Financial Analysis

/s/ Bob Schallenberg 6/23/16 /s/ Steven Dottheim 6/23/16
Operational Analysis Manager / Date Staff Counsel's Office / Date

SUBJECT: Staff Memorandum

DATE: June 23, 2016

STAFF MEMORANDUM

The Staff of the Missouri Public Service Commission (“Staff”) submits the instant Memorandum regarding the Application of South Central MCN LLC (“SCMCN” or “Company”) for a Missouri Public Service Commission (“Commission”) Certificate of Convenience and Necessity (“CCN”). The Application describes the assets that SCMCN would acquire as being “approximately 10 miles of 69 kV electric transmission lines and related facilities ... located in Christian and Greene Counties.” On pages 12-13 of the Application, SCMCN makes seven (7) distinct requests of the Commission. Staff recommends that the Commission condition the granting of the requested relief upon SCMCN filing the following documents:

- 1) SCMCN file documents that verify the facilities that are the subject of this Application will be in Southwestern Power Administration (“SWPA”) pricing zone 10 of the Southwest Power Pool, Inc. (“SPP”) per the terms of the Settlement Agreement reached among various parties in this case.

- 2) SCMCN file the five (5) Exhibits that were designated as “Draft to be attached no later than thirty (30) days from the Effective Date” in the Asset Purchase Agreement (“APA”), Appendix A to the Application. These five Exhibits are Exhibit A: Interconnection Assignment Agreement; Exhibit F: Transition Services Agreement; Exhibit G: Pole Attachment Agreement; Exhibit H: Transmission Services Agreement; and Exhibit I: Lease and Access Agreement.
- 3) SCMCN file the agreement regarding system control services with City Utilities of Springfield when finalized or the Company’s revised plan regarding system control services if the current plan to use City Utilities is altered.
- 4) SCMCN file the agreement regarding operation and maintenance services with BBC Electrical Services, Inc. or the Company’s revised plan regarding operation and maintenance services if the current plan to use BBC Electrical Services, Inc. is altered.

Staff’s recommendations regarding the seven (7) SCMCN Requests (set out below) are as follows:

- A. Finding that the Transaction (including the transfer of the Assets to SCMCN and all of the steps necessary to consummate the Transaction and any future transfers of property pursuant to the APA) is not detrimental to the public interest: Staff asserts that the Tartan Criteria are the appropriate criteria to consider for granting a CCN and those criteria have been met in this case. Staff is not aware of “any future transfers of property pursuant to the APA” that would not take place when the Transaction is consummated and believes that this language of SCMCN is not needed and creates confusion. Therefore Staff recommends the language “and any future transfers of

- property” be deleted and the Commission conditionally approve the Transaction (including the transfer of the Assets to SCMCN and all of the steps necessary to consummate the Transaction pursuant to the APA) is not detrimental to the public interest;
- B. Disclaiming jurisdiction under Section 393.190 RSMo. And confirming the inapplicability of 4 CSR 240-3.110 to the Transaction or, in the alternative, authorizing SCMCN and the City to execute any and all documents necessary to effectuate the Transaction, including the transfer of the Assets to SCMCN consistent with the APA: In Staff’s opinion, the Commission has already addressed this issue with its Order Granting Motion for Partial Disposition effective February 10, 2016 and recommends that the CCN, which Staff would more specifically describe as a line certificate for approximately 10 miles of 69kV transmission lines and related facilities, be granted subject to conditions.
- C. Authorizing SCMCN to execute any and all documents necessary to transfer functional control of the Assets to SPP and to integrate the Assets into the SPP transmission system: Staff concurs with SCMCN’s request but Staff also requests that the Commission order SCMCN, beginning January 1, 2017 and every year thereafter on January 1 until otherwise ordered by the Commission, to file a report with the Commission concerning its membership in SPP. Such a report should include the perspective of SCMCN on the economic viability of remaining in SPP.
- D. Granting a new CCN to SCMCN to own, operate, control, manage and maintain the Assets being transferred as part of this Transaction and other such transmission assets as may be acquired, constructed, or installed by SCMCN in the future: Staff

recommends that the CCN, which Staff would more specifically describe as a line certificate for approximately 10 miles of 69kV transmission lines and related facilities located in Christian and Greene Counties, be granted as a line certificate subject to conditions. SCMCN states in its Application in Paragraph 34, page 11 that the Application is not for a service area and it does not propose to construct new transmission lines.

- E. Confirming the inapplicability of or, in the alternative, granting a waiver from the requirements of 4 CSR 240-3.105(1)(A)&(1)(B).1-3; 4 CSR 240-3.115; 4 CSR 240-3.120; 4 CSR 240-3.145; 4 CSR 240-3.165; 4 CSR 240-3.175; 4 CSR 240-3.190(1), (2), and (3)(A)-(D); and 4 CSR 240-4.020(2): Staff recommends that the Commission grant the waiver requested. Staff also recommends that the Commission find that 4 CSR 240-3.180; 4 CSR 240-3.190(3)(E); 4 CSR 24-3.190(4) and (5) regarding accidents; and 4 CSR 240-3.190(6)-(10) apply to SCMCN. SCMCN offered/agreed in Paragraph 36 of its Application to file with the Commission the annual report that it files with the FERC. Staff recommends the Commission direct SCMCN to file with the Commission the annual report that it files with the FERC.
- F. Granting the relief requested by no later than October 30, 2015, in order to allow SCMCN and the City to meet their contractual commitment to consummate the Transaction effective December 1, 2015: Due to subsequent filings, this request is moot. Staff would note that the December 1, 2015 date apparently was a SCMCN self-imposed deadline.
- G. Issuing such other orders as are appropriate in the circumstances and granting all other necessary and proper relief including without limitation finding that the Transaction

either satisfies all applicable and lawful requirements or otherwise is exempt therefrom:

Staff is not aware of any additional approvals that have not already been addressed.

Finally, Staff recommends that the Commission order SCMCN to follow the construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management that is attached to this Memorandum. Staff also recommends that SCMCN make annual filings concerning its:

- 1.) Membership in SPP, which is more fully described in Staff's response to SCMCN's Request "C" above;
- 2.) Annual filings with FERC, which are more fully described in Staff's response to SCMCN's Request "E" above.

DISCUSSION

SCMCN is a corporation existing and organized in the State of Delaware, its principal place of business being at 2 N. LaSalle Street, Suite 420, Chicago IL 60602. As illustrated in Appendix B in its Application, SCMCN is authorized to do business within the State of Missouri.

SCMCN is not serving electric retail customers in Missouri nor will it serve electric retail customers in Missouri as a result of the granting of the requested CCN. SCMCN is not required to file annual reports with the Commission nor is it required to pay assessment fees. Staff is not aware of any pending actions or unsatisfied judgments against SCMCN concerning customer service or rates occurring within three (3) years of this filing.

The Commission has not issued an Order informing any party who desired to intervene in this case to file such application but the City of Nixa ("Nixa") applied to intervene on August 26, 2015. The City of Springfield, Missouri, Board of Public Utilities ("City Utilities")

filed to intervene on October 30, 2015. The Commission approved both applications for intervention.

SCMCN has not previously provided retail or wholesale electric service in Missouri. SCMCN is not requesting to serve retail customers and is not requesting a service territory or service area. The transmission lines that are described in the Application are already built and operating under the Nixa's control and therefore this Application is not seeking approval to construct a new transmission line. SCMCN instead plans to own, operate, control, manage and maintain "approximately 10 miles of 69 kV electric transmission lines and related facilities ... located in Christian and Greene Counties." In Appendix A to the Application, it further describes that the lines go from the James River Power Station to the SWPA Substation while passing through three (3) Nixa substations.

Since the transmission lines that are the subject of this Application already exist, the operation and maintenance of the transmission lines are of particular interest in this case. The plan to operate and maintain the transmission lines has changed from the original plan described in the Application. BBC Electrical Services, Inc. will perform operation, maintenance and repair services per the terms of the agreement it entered into with SCMCN. Although the Application states that SCMCN will file Appendix D-2, a service agreement between SCMCN and City Utilities, this document is no longer needed since operation and maintenance will be performed by BBC Electrical Services, Inc. In addition, five (5) Exhibits that were designated as "Draft to be attached no later than thirty (30) days from the Effective Date" in the Asset Purchase Agreement ("APA"), Appendix A to the Application, have not been filed. These five (5) Exhibits are Exhibit A: Interconnection Assignment Agreement; Exhibit F: Transition Services

Agreement; Exhibit G: Pole Attachment Agreement; Exhibit H: Transmission Services Agreement; and Exhibit I: Lease and Access Agreement.

The Application discusses the criteria that were used by the Commission in Case No. GA-94-127, Tartan Energy Company, 3 Mo.P.S.C.3d 173, 177 (1994). These five (5) criteria are commonly referred to as the Tartan Criteria. The Application describes how the SCMCN believes it has met these criteria. The list of criteria and Staff's position on each is provided below:

1) There must be a need for the service: Since this request is for transmission lines that already exist and are essential to providing reliable power to existing Missouri customers, especially the customers of the City of Nixa, it is Staff's opinion that this criteria has been met.

2) The applicant must be qualified to provide the proposed service: Although SCMCN is a start-up company; various employees have a long history of operating and maintaining transmission lines. SCMCN has also added additional employees with electric utility experience since the Application was filed. The line is currently operated and maintained by City Utilities and SCMCN has outlined a business plan where BBC Electrical Services, Inc. will replace City Utilities until SCMCN is ready to assume the operation and maintenance of the line. This appears to be a logical plan and Staff agrees that the applicant is qualified to provide the proposed service in this manner.

3) The applicant must have the financial ability to provide the service: Edward M. Rahill sponsored testimony regarding SCMCN's financial ability to acquire the transmission assets that are the subject of this Application. Mr. Rahill specifically addresses SCMCN's financial ability on pages 2 through 4 of his Supplemental Direct Testimony filed on December 10, 2015.

Mr. Rahill's Supplemental Direct Testimony and the documents attached to his Supplemental Direct Testimony explain and support SCMCN's financial qualifications through indirect support from Blackstone private equity funds. Specifically, SCMCN's funding for the acquisition is fully committed by Blackstone Capital Partners VI L.P. (Blackstone Capital VI) and Blackstone Energy Partners II L.P. (Blackstone Energy II).

Blackstone Capital VI manages \$15.2 billion of capital.¹ Blackstone Energy II manages \$4.5 billion of capital.² Large institutional investors, such as the California Public Employees' Retirement System and the Canada Pension Plan Investment Board invest in Blackstone's funds.³

Blackstone's family of funds are rated "A+" by Standard & Poor's and "A+" by Fitch Ratings. .⁴

The information Staff reviewed demonstrates that SCMCN has the financial qualifications necessary for the Commission to approve the Application.

4) The applicant's proposal must be economically feasible: The Application describes the plan to value the assets at book value and to recover the full cost of service (both rate base and ongoing expenses) under a forward-looking formula rate, collected by SPP. These rates will be under the jurisdiction of FERC and should allow SCMCN a reasonable opportunity to earn a return on its investment.

5) The service must promote the public interest: SCMCN cites increased reliability in the region due to the existence of these lines, increased reliability due to SCMCN's focus on transmission services, and the support from the City of Nixa (the City's customers will

¹ <http://www.reuters.com/article/blackstone-group-fund-idUSL1N0XY22Q20150507>

² <http://fuelfix.com/blog/2015/02/23/blackstone-to-pour-9-billion-into-struggling-energy-industry/>

³ <http://www.reuters.com/article/blackstone-group-fund-idUSL1N0XY22Q20150507>

⁴ Schedules EMR-3 and EMR-4 attached to Edward M. Rahill's Supplemental Direct Testimony

ultimately pay for the use of the transmission lines). SCMCN also cites its goal to integrate these transmission lines into a group of assets that would be operated and maintained by SCMCN but since this is the only asset that SCMCN currently has rights to, Staff did not include this future goal in its assessment of the public interest. Based on the reasons described above, it is Staff's opinion that this criterion has been met.

As described earlier in this Memorandum, Staff has addressed the seven (7) SCMCN requests. One of the requests discusses various reporting requirements. Another discusses transferring functional control of the assets to SPP. As part of Staff's response to these requests, Staff supports the request to grant a waiver from various reporting requirements but Staff also requests that the Commission affirm that 4 CSR 240-3.180; 4 CSR 240-3.190(3)(E) reporting loss of transmission capability that could limit the output of a generating plant; 4 CSR 24-3.190(4) and (5) regarding accidents; and 4 CSR 240-3.190(6)-(10) apply to SCMCN.

As part of Staff's response to the transferring functional control of the assets to SPP, Staff requests that the Commission order SCMCN, beginning January 1, 2017, and every year thereafter on January 1, until otherwise ordered by the Commission, to file a report with the Commission concerning its membership in SPP. Such a report should include the perspective of SCMCN on the economic viability of remaining in SPP.

SCMCN's Chief Operating Officer Noman L. Williams' Direct Testimony filed on December 10, 2015 in File No. EA-2016-0036 states on page 8, lines 7-13 his belief that SCMCN and City Utilities would come to agreement such that City Utilities would agree to continue to provide system control services, but SCMCN had an alternative plan if SCMCN was, like with O&M services, unable to reach final agreement with City Utilities. Mr. Williams said SCMCN had identified other utilities in the area, which he understood would provide the system control services if

City Utilities chose not to do so, until such time that SCMCN's control center was up and operating.

In response to Staff's Data Request 0010, SCMCN on May 31, 2016 stated the following:

SCMCN has every reason to believe that CU will enter into an agreement to provide the system control services. However, SCMCN has determined that there are numerous other entities which would be able to provide those services and, upon notice from CU that it is discontinuing or declining to provide the system control services, SCMCN would work to put an agreement in place with another entity.

Staff requests that the Commission require SCMCN to file the agreement regarding system control services with City Utilities when finalized or SCMCN's revised plan regarding system control services if the current plan is altered as a condition to granting the Application. In addition, since SCMCN witness Williams' refers to the Maintenance Agreement that SCMCN executed on November 3, 2015 with BBC Electrical Services, Inc. Staff requests that the Commission require SCMCN to file that agreement also.

Since this Application involves the operation and maintenance of a transmission line, Staff supports a condition to address certain construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management. Staff historically proposes that the Commission order construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management as it did in Case No. EO-2002-351, the Callaway – Franks Transmission Line CCN. Staff recommends that these practices be updated to reflect the current case by substituting "SCMCN" in place of "AmerenUE" and "The City of Nixa" in place of "AECl". The updated practices are attached to this Memorandum.

Exhibit A

Case No: EO-2002-351EA-2016-0036

Construction and Clearing

1. Prior to construction, ~~AmerenUESCMCN~~ will notify all landowners in writing of the name and telephone number of ~~AmerenUESCMCN~~'s Construction Supervisor so that they may contact the Construction Supervisor with questions or concerns before, during, or after construction. Such notice will also advise the landowners of the expected start and end dates of construction on their properties.
2. Prior to construction, ~~AmerenUESCMCN~~'s Construction Supervisor will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make ~~AmerenUESCMCN~~ aware.
3. If ~~AEC/The City of Nixa~~ reached a written agreement with a landowner when the original ~~AEC/The City of Nixa~~ easement was granted calling for a particular method of clearing or right-of-way maintenance, ~~AmerenUESCMCN~~ will honor that agreement unless now prohibited by law from doing so, or unless an alternate agreement is reached with the current property owner.
4. From the beginning of construction until end of construction and clean-up of the right-of-way is complete, ~~AmerenUESCMCN~~'s Construction Supervisor will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.
5. If requested by the landowner, ~~AmerenUESCMCN~~ will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them just outside the right-of-way for handling by the landowner.
6. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade.
7. Unless otherwise directed by the landowner, stumps will be treated to prevent regrowth.
8. Unless the landowner does not want the area seeded, disturbed areas will be reseeded with a blend of K31 fescue, perennial rye, and wheat grasses, fertilized, and mulched with straw.

9. Best management practices will be followed to minimize erosion, with the particular practice employed at a given location depending upon terrain, soil, and other relevant factors.
10. Gates will be securely closed after use.
11. Should AmerenUESCMCN damage a gate, AmerenUESCMCN will repair that damage.
12. If AmerenUESCMCN installs a new gate, AmerenUESCMCN will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that it is secure against the escape of livestock.
13. AmerenUESCMCN will utilize design techniques intended to minimize corona.
14. Should a landowner experience radio or tv interference issues believed by the landowner to be attributed to AmerenUESCMCN's line, AmerenUESCMCN will work with the landowner in good faith to attempt to solve the problem.
15. AmerenUESCMCN will clearly mark guy wires.

Maintenance and Repair

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, AmerenUESCMCN will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of AmerenUESCMCN's presence, particularly if access is near their residence.
2. All AmerenUESCMCN contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.
3. All right-of-way maintenance contractors will employ foremen that are certified arborists.
4. If herbicides are used, only herbicides approved by the EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.
5. Routine maintenance will not occur during wet conditions so as to prevent rutting.

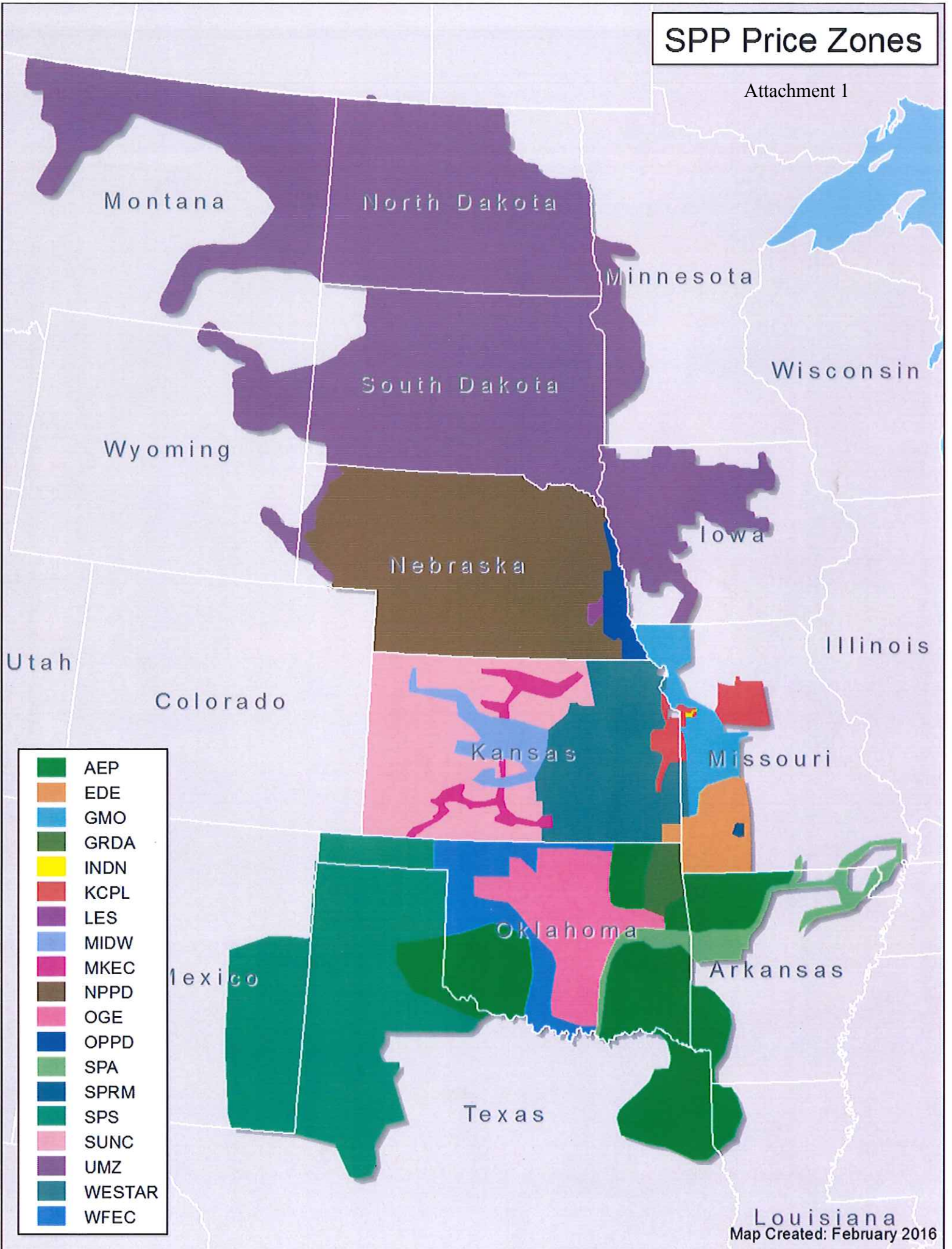
6. Existing access roads will be used to access the right-of-way wherever available.
7. Prior to commencing any vegetation management on the right-of-way, ~~AmerenUESCMCN~~ will meet personally with all landowners to discuss ~~AmerenUESCMCN~~'s vegetation management program and plans for their property, and to determine if the landowner does or does not want herbicides used on their property. If the landowner does not want herbicides used, they will not be used.

Right-of-Way Acquisition

1. Every landowner from whom ~~AmerenUESCMCN~~ requires an easement will be contacted personally, and ~~AmerenUESCMCN~~ will negotiate with each such landowner in good faith on the terms and conditions of the easement, its location, and compensation therefor. They will be shown a specific, surveyed location for the easement and be given specific easement terms.
2. After construction is completed, every landowner will be contacted personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred.
3. With regard to landowners over whose land an existing ~~AECI~~The City of Nixa easement exists, ~~AmerenUESCMCN~~ will honor the location shown on the plat given to the original grantor unless otherwise agreed by the landowner and will not treat the easement as a "blanket" easement over the rest of the property.
4. If a landowner so desires, ~~AmerenUESCMCN~~ will give the landowner a reasonable period of time in advance of construction to harvest any timber the landowner desires to harvest and sell.
5. ~~AmerenUESCMCN~~'s right-of-way acquisition policies and practices will not change regardless of whether ~~AmerenUESCMCN~~ does or does not yet possess a Certificate of Convenience or Necessity from the Commission.

SPP Price Zones

Attachment 1



- AEP
- EDE
- GMO
- GRDA
- INDN
- KCPL
- LES
- MIDW
- MKEC
- NPPD
- OGF
- OPPD
- SPA
- SPRM
- SPS
- SUNC
- UMZ
- WESTAR
- WFEC

EA-2016-0036

PURCHASE PRICE & ALLOCATION OF PURCHASE PRICE FROM SCMCN (BUYER) TO NIXA (SELLER)			
APA ¹	1 st Amendment	2 nd Amendment	Settlement Agreement
August 14, 2015	August 14, 2015	February 12, 2016	April 28, 2016
Purchase Price			
\$11,215,160.00 ¹	\$12,215,160.00 ²	\$10,715,160.00 ³	\$10,715,160.00 ³

¹ Asset Purchase Agreement

Purchase Price Allocation. The Purchase Price comprises the following components and shall be allocated as follows:

- (a) Nine Million One Hundred Fifteen Thousand One Hundred Sixty and No/100 Dollars (\$9,115,160) payable by Buyer to Seller at Closing for the Assets;
- (b) Six Hundred Thousand and No/100 Dollars (\$600,000) payable by Buyer to Seller at Closing to reimburse Seller for a portion of its transaction costs; and
- (c) Up to One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) in Transmission Charge Reimbursements.

² **Purchase Price.** Section 1.1.53 of the APA is hereby deleted in its entirety and replaced with the following:

1.1.53 Purchase Price. Purchase Price means an amount not to exceed Twelve Million Two Hundred Fifteen Thousand One Hundred Sixty and No/100 Dollars (\$12,215,160).

The Purchase Price shall be payable in accordance with the Purchase Price Allocation below.

Purchase Price Allocation. The Purchase Price comprises the following components and shall be allocated as follows:

- (a) Ten Million One Hundred Fifteen Thousand One Hundred Sixty and No/100 Dollars (\$10,115,160) payable by Buyer to Seller at Closing for the Assets;
- (b) Six Hundred Thousand and No/100 Dollars (\$600,000) payable by Buyer to Seller at Closing to reimburse Seller for a portion of its transaction costs; and
- (c) Up to One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) in Transmission Charge Reimbursements (as hereinafter defined), as more fully set forth in Section 4 hereof.

Reimbursement of Transmission Charges. For the purpose of reimbursing Seller for the increased transmission charges incurred after Closing (the Increased Charges), as a component of the Purchase Price, GridLiance Heartland has agreed to pay to Seller an additional amount up to One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) (Transmission Charge Reimbursement), payable in two (2) installments:

³ **Purchase Price.** Section 1.1.53 of the APA is hereby deleted in its entirety and replaced with the following:

1.1.53 Purchase Price. Purchase Price means an amount not to exceed Ten Million Seven Hundred Fifteen Thousand One Hundred Sixty and No/100 Dollars (\$10,715,160).

Purchase Price Allocation. Section 3 of the First Amendment "Purchase Price Allocation" is hereby deleted in its entirety. The Purchase Price comprises the following components and shall be allocated as follows:

- (a) Ten Million One Hundred Fifteen Thousand One Hundred Sixty and No/100 Dollars (\$10,115,160) payable by Buyer to Seller at Closing for the Assets; and
- (b) Six Hundred Thousand and No/100 Dollars (\$600,000) payable by Buyer to Seller at Closing to reimburse Seller for a portion of its transaction costs; and

Reimbursement of Transmission Charges. Section 4 of the First Amendment "Reimbursement of Transmission Charges" is hereby deleted in its entirety.

Joinder. Section 6 of the First Amendment "Joinder" is hereby deleted in its entirety.

ATTACHMENT 3
HAS BEEN DEEMED
HIGHLY CONFIDENTIAL
IN ITS ENTIRETY.

**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)

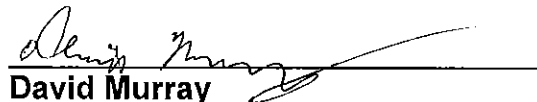
File No. EA-2016-0036

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

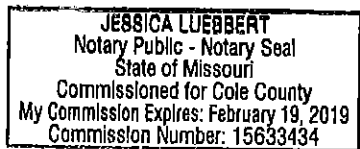
COMES NOW David Murray and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Memorandum* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


David Murray

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 23rd day of June, 2016.




NOTARY PUBLIC