**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 ) File No. EA-2016-0036**

**Assets and a Certificate of Convenience and )**

**Necessity )**

**CITY UTILITIES’ RESPONSE IN OPPOSITION TO**

**SCMCN’S MOTION FOR PARTIAL DISPOSITION**

COMES NOW the City of Springfield, Missouri, by and through the Board of Public Utilities, (hereinafter “City Utilities”), pursuant to 4 CSR 240-2.117(1)(C), and submits this Response in Opposition to South Central MCN, LLC’s, (“SCMCN”) Motion for Partial Disposition. City Utilities states as follows:

**Responses to SCMCN’s Statement of Undisputed Facts**

1. In response to Paragraph 1 of SCMCN’s Motion, City Utilities states that, on August 19, 2015, SCMCN filed it Application with the Commission pursuant to Section 393.170 R.S. Mo., seeking a certificate of public necessity to own and operate an existing set of transmission lines. SCMCN’s August 19 Application was also filed pursuant to Section 393.190 R.S. Mo., 4 CSR 240-2.060, 4 CSR 240-3.105, and 4 CSR 240-3.110.

2. In response to Paragraph 2 of SCMCN’s Motion, City Utilities states that the City of Nixa, Missouri (“Nixa”) is a home rule charter city organized and existing under Article VI § 19 of the Missouri Constitution, having adopted its Home Rule Charter on April 6, 2010.[[1]](#footnote-1).

3. In response to Paragraph 3 of SCMCN’s Motion, City Utilities states that Nixa owns and operates a municipal electric utility system that, according to the City’s website, serves approximately 9,000 customers (which approximately 1,000 are commercial and industrial customers) and employs a total of 14 employees.[[2]](#footnote-2)

4. In response to Paragraph 4 of SCMCN’s Motion, City Utilities states that Appendix A to SCMCN’s August 19 Application purports to be an Asset Purchase Agreement (“APA”) entered into between it and the City of Nixa on August 14, 2015, and Exhibit EMR-8 to the Supplemental Direct Testimony of Edward Rahill, dated December 9, 2015, purports to be a partially executed First Amendment to that Asset Purchase Agreement. The documents speak for themselves.

5. In response to Paragraph 5 of SCMCN’s Motion, City Utilities states that it is unable to predict whether or not, “[i]n accordance with the Southwest Power Pool’s (“SPP”) Membership Agreement, SCMCN will, upon purchase of the Assets, execute SPP’s standard functional control agreement by which SCMCN and SPP will agree to transfer the Assets to the functional control of SPP and to integrate the Assets into the SPP transmission system.” City Utilities acknowledges that the Direct Testimony of Carl Huslig on Behalf of SCMCN dated December 9, 2015, at 4:12-14, expresses such an intention.

6. In response to Paragraph 6 of SCMCN’s Motion, City Utilities states that it is unable to predict whether or for how long “the Assets will be owned by SCMCN, a transmission-only company with no retail customers.” SCMCN Application at ¶ 15 (seeking authorization to “sell, assign, lease or transfer assets”).

**Additional Material Facts**

7. SCMCN is, or intends to become, an “electrical corporation” within the meaning of R.S. Mo. § 386.020(15) and R.S. Mo. § 393.190.1 (SCMCN Application at ¶¶ 2, 5, 10-11).

8. SCMCN owns and intends to own “electric plant” within the meaning of R.S. Mo. § 386.020, other than or in addition to the facilities that it proposes to acquire from the City of Nixa in the event that this Commission authorizes such acquisition as requested by SCMCN in its Application in this proceeding (SCMCN Application at ¶ 1 and page 13 ¶ D), and is actively prosecuting the acquisition of certain electric facilities from Tri-County Electric Cooperative, Inc. of Hooker, Oklahoma, in Federal Energy Regulatory Commission Docket No. EC15-206-000.[[3]](#footnote-3)

9. The acquisition for which SCMCN seeks the Commission’s authorization in this proceeding will result in the consolidation of electric plant and system owned by SCMCN with that of the City of Nixa. The City of Nixa is a “person” as that term is used in Section 393.190.1 R.S. Mo.

WHEREFORE, and for the reasons set forth in the accompanying Memorandum in Opposition to SCMCN’s motion, the authorization sought in SCMCN’s Application would result in an electrical corporation (SCMCN) consolidating a part of its works or system with another person (the City of Nixa), which is an act requiring the authorization of the Commission under Section 393.190.1 R.S. Mo. The Commission should therefore deny SCMCN’s Motion for Partial Disposition and find that it has jurisdiction over SCMCN’s Application under both Section 393.170 R.S. Mo. and Section 393.190.1 R.S. Mo.

Respectfully submitted,

*/s/ John P. Coyle*

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**ATTORNEYS FOR CITY UTILITIES OF SPRINGFIELD**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of City Utilities’ Response in Opposition to SCMCN’s Motion for Partial Disposition was sent to the following parties via ( ) U.S. Mail, postage prepaid, ( ) facsimile, ( X ) electronic transmission, and/or ( ) hand delivering on this \_\_\_\_ day of January, 2016:

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*/s/ John F. Black*

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1. According to the “official” version of the Nixa Charter, published by Municode, and available at <https://www.municode.com/library/mo/nixa/codes/code_of_ordinances?nodeId=PTIHORUCH> (site last visited January 11, 2016). The Commission is authorized to take official notice of the facts set forth in this paragraph by § 586.070(6) R.S. Mo., and City Utilities requests that it do so. [↑](#footnote-ref-1)
2. <http://www.nixa.com/index.aspx?page=92> (site last visited January 11, 2016). The Commission is authorized to take official notice of the City of Nixa’s public statement to this effect by § 586.070(6) R.S. Mo., and City Utilities requests that it do so. [↑](#footnote-ref-2)
3. The Commission is authorized to take official notice of the pendency of SCMCN’s application for authorization to acquire certain assets of Tri-County Electric Cooperative, Inc. in FERC Docket No. EC15-206-000, as set forth in this paragraph, by § 586.070(6) R.S. Mo., and City Utilities requests that it do so. [↑](#footnote-ref-3)