

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric            )  
Company d/b/a Ameren Missouri for Approval                )  
of a Subscription-Based Renewable Energy Program        )        **File No. EA-2022-0245**

**STAFF’S POST-HEARING REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and tenders the following post-hearing reply brief.

**SYLLABUS**

Ameren Missouri argues that its Project satisfies the Tartan needs requirement because it will pour some renewable energy into MISO and may help Ameren Missouri avoid being a MISO net purchaser from time to time after a future date. Ameren Missouri currently sells all its energy, both renewable and non-renewable, into MISO and purchases all energy which it needs from MISO. Pouring some renewable energy into MISO will not change that. Doing so will not reduce the fleet of non-renewable resources which Ameren Missouri must have up and operational (and in rate base). Doing so will not allow any non-subscribing Missouri customer to correctly claim s/he is using any less non-renewable energy. There is no requirement that Ameren Missouri sell any more energy into MISO than it purchases. As an “objective,” avoiding being a MISO net purchaser is an economic one. Yet Ameren Missouri’s Project is uneconomical. Ameren Missouri’s case is self-defeating. The Commission should reject the proposed Project.

## ARGUMENT

### A

#### Overview

Ameren Missouri claims that its Project meets the Tartan need requirement even though (1) the Project does not change the fact that Ameren Missouri can and will continue to purchase all energy necessary to meet the load of its ratepayers from MISO markets, and Ameren Missouri is confident in its ability to continue to serve ratepayer needs through MISO regardless of the Project; (2) Ameren Missouri's purported energy shortfall is more accurately described as a net energy purchase position; (3) Ameren Missouri is not required to sell more energy into MISO than it purchases; (4) Ameren Missouri's existing fleet will continue to be dispatched to meet the needs of the MISO footprint; (5) Ameren Missouri's evidence does not show that nonrenewable energy resources can actually be removed from rate base or that any non-subscribing customer can correctly claim s/he is using less nonrenewable energy as a result of this project; and (7) the Project's revenues will not cover its costs.

So exactly what "need" does the Project address? Ameren Missouri's only demonstrable need is to avoid being a MISO net purchaser from time to time. If this is, indeed, a worthy "objective" (it is not a MISO "requirement"), it is purely economic.<sup>1</sup> Then to repeat point 7 in the last paragraph: The Project's revenue will not cover its costs. Ameren Missouri proposes to meet a purely economic objective with a demonstrably uneconomical solution. An "energy shortfall" can be reduced by

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<sup>1</sup> It cannot be anything more than an economic need if 1) Ameren Missouri is confident it can meet all its future energy needs through MISO; 2) the Project will not allow for the reduction of the non-renewable energy fleet; and 3) the Project will not allow Missouri non-subscribing customers to correctly claim they are using less non-renewable energy.

increasing energy sales generation and/or reducing load. The Project will not reduce the load of ratepayers nor the cost to serve that load through MISO markets. If the revenues of the Project are less than costs—and they will be--then reducing the shortfall by increasing generation is more expensive than maintaining the status quo. The ability to sell energy, at a net cost to ratepayers in an attempt to reduce a shortfall, is not an improvement that justifies the costs of the Project. And that (a) it appears that this asset will not be needed for MISO net purchase purposes until 2 or 3 years (not clear from the record)<sup>2</sup> after it is built and in rate base, and that (b) the asset may well become obsolete and require replacement or additions with duplicated investment well before it is out of rate base, puts the nail in the coffin. The project is unquestionably uneconomical.

Ameren Missouri argues that this Commission must not consider whether the project's revenues will pay for its costs and that Staff's position to the contrary is novel and myopic. That argument amounts to telling the Commission not to look behind the curtain and at why Ameren Missouri's case self-destructs. Staff replies that if a stated need is economic, then its solution must be economical; and, contrapositively, if the specific solution proposed is not economical, then the need has not been met. A review of cases which Ameren Missouri's Initial Brief references serves to make the point.

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<sup>2</sup> Figure 2 of Ameren Witness Matt Michels Surrebuttal testimony indicates that the "energy shortfall" is expected to occur in 2028 but ends in 2031 when the company plans to add a combined cycle generating resource.

## B

### Ameren Missouri's Cited Cases

Ameren Missouri has cited to cases which are actually templates for identifying its proposed Project's fatal shortcomings and for assisting this Commission in formulating risk sharing mechanisms in the event that the Commission chooses to grant a CCN. Although Staff will here review the risk sharing cases cited, Staff maintains its position that the Commission should reject the CCN application.

#### **Mark Twain**

As Ameren Missouri did in the hearing, in its brief Ameren Missouri again picks what it likes and ignores what it does not like in Staff witness J Luebbert's testimony.

Ameren Missouri quotes his statement:

Once the need is established and the projects determined to promote the public interest based upon the best information available at the time, it is reasonable for the ratepayers to assume the risk that the project selected is uneconomic. This assumption of risk is justified because absent the load of the ratepayers, the utility would not be obligated to invest in additional resources.<sup>3</sup>

Ameren Missouri argues that this statement is an admission that whether the cost of a project will exceed its revenues is irrelevant to whether an expenditure satisfies the Tartan need requirement. Ameren Missouri's Initial Brief claims that Staff counsel attempted to "run" from this witness's testimony during the hearing by "painstakingly" quoting into the record Mr. Luebbert's full testimony, and asserts that "[a]ny fair reading" of Mr. Luebbert's testimony was as stated in Ameren Missouri's witness Wills' abbreviation and interpretation, as set out here in Ameren Missouri's Initial Brief:

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<sup>3</sup> Ameren Brief, p. 37.

Q. Mr. Wills, is that what Mr. Luebbert said in providing the rest of the text of his answer that you quoted one sentence from?

A. Well, I – again, I didn’t quote that one sentence. But what I will tell you is I think this whole statement still supports exactly what I said. The question you read is are there solutions to unnecessary risks to rate payers. We are making the case this is necessary. So I don’t think that the question is relevant to the way I – our disagreement with Staff is whether this is necessary, right. But I’m putting forth to the Commission that this is necessary. If that’s the case, I don’t care what the sentence says about what you do with unnecessary risks, there aren’t any.<sup>4</sup>

Staff here replies that, in all fairness, witness Luebbert should be allowed to say what he said, and that it is Ameren Missouri that is running.<sup>5</sup> As witness Luebbert

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<sup>4</sup> Ameren Brief, p. 38.

<sup>5</sup> Exhibit 105, pp. 7 – 11. Q. How does the demonstration of need relate to the economic risks of the IOUs and its ratepayers?

A. When any utility is building or purchasing an electric generating asset, there are risks inherent in the decision. When the asset addition is necessary to serve the load of ratepayers, there is a risk that costs exceed the revenues from the asset. Once the utility clearly establishes that the resource addition is necessary to meet the needs of ratepayers, a decision must be made by the IOU to ensure that the utility can continue to serve the customer’s load. Then the economic efficiency of the decision and promotion of the public interest of the decision to build or purchase a specific asset is necessary to ensure that the choice of asset is sound. Once the need is established and the project is determined to promote the public interest based upon the best information available at the time, it is reasonable for the ratepayers to assume the risk that the project selected is uneconomic. This assumption of risk is justified because absent the load of the ratepayers, the utility would not be obligated to invest in additional resources.

Q. Does that same principle hold when a given project is either not necessary to serve the needs of ratepayers, is not an economically efficient use of resources, or is not in the public interest?

A. No. Captive ratepayers should not be expected to shoulder the risk that an electric generating plant, built beyond the energy and capacity needs of the ratepayers being served, is uneconomic.

Q. Are there solutions to avoid this unnecessary risk to ratepayers?

A. Yes. The Commission’s role as the regulator of the monopoly is a key protection against the introduction of unnecessary risk, by utility management, on behalf of ratepayers. The Commission has typically exercised this role through the application of the Tartan factors when considering the request to build new generating facilities. By ensuring that all of the Tartan factors are met by the utility and ensuring that the utility provides all crucial supporting analysis that establishes needs, economic feasibility, and promotion of the public interest. If the Commission determines that adding additional renewable resources is appropriate but recognizes that the potential risk of uneconomic outcomes should not be borne solely by ratepayers, it is within the Commission’s discretion to condition approval of the CCN. One potential solution is for the Commission to condition any potential approval of an asset with a hold harmless provision that would shift some of the risk of an uneconomic outcome back to shareholders and away from the captive customers.

explained, whether an asset is “needed” includes, as a material consideration, whether the “additional service would be an improvement *justifying its costs*” (emphasis added).<sup>5</sup> Among several factors to be considered in determining whether an asset is “necessary” is whether the *risk* of wasted money is also “necessary”. Witness J Luebbert explained:

Q. Are there policy implications of approving a CCN for electric generating assets for ratepayer needs that will not occur until the assets have been depreciated for several years?

A. Yes. Allowing a monopoly utility to add generating assets to rate base well in advance of the ratepayer needs could result in ratepayers *paying multiple times for solutions to the same identified need and lead to unwarranted duplication of profits for utility shareholders*. Adding large amounts of generating resources well ahead of an identified ratepayer need increases the likelihood that the resource is not the optimal resource to meet the actual needs of ratepayers. All electric generating plants have a finite life expectancy. If resources are added too far in advance of an actual ratepayer need, the length of time that the specific resource will be able to fulfill that need is reduced. *In other words, ratepayers run the risk that another resource will need to be added to rate base sooner than would have been necessary and Ameren Missouri’s shareholders would benefit* [emphasis added].<sup>6</sup>

In light of the efficiency and reliability issues inherent in a solar powered resource to be located in Illinois, Mr. Luebbert’s point is not a matter of surmise or speculation; and, notably, stands substantially unchallenged in this case. Ameren Missouri has now taken this tactic to a new level in its Initial Post Trial Brief. It has treated this Commission’s prior cases in the same way.

Ameren Missouri cites to *In the Matter of Ameren Transmission Company of Illinois* (“Mark Twain”)<sup>7</sup> for its argument that pouring green energy anywhere into the MISO

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<sup>6</sup> Exhibit 105, pp. 11-12.

<sup>7</sup> *In the Matter of Ameren Transmission Company of Illinois*, File No. EA-2015-0146, Report and Order, Eff. Apr. 27, 2016, 2016 WL 1730118 (Mo. P.S.C.) (“Mark Twain Report and Order”). The Commission vacated this Report and Order in EA-2015-0146 per mandate of the Court of Appeals of June 28, 2017, in *Matter of Ameren Transmission Company of Illinois*, 523 S.W.3d 21 (Mo. App. W.D. 2017). That case, in turn was abrogated by *Grain Belt Express Clean Line, LLC v. Public Service Commission*, 555 S.W.3d 469 (Mo. banc 2018). *Matter of Ameren Transmission* was abrogated as to its holding that prior consent of an affected county was required for a utility to obtain a line CCN.

system is sufficient unto itself to satisfy the Tartan need factor. Ameren Missouri cites *Mark Twain* for the following propositions:

- “The Commission has also specifically and expressly found that projects (in the case in question, transmission needed to deliver renewable energy) are “in the public interest because [they are] need to: . . . [p]romote renewable energy” [Ameren Missouri’s emphasis].<sup>8</sup>
- “Not a single party can credibly dispute. . . [t]hat the Project will not reduce emissions throughout MISO’s footprint, providing “substantial benefits to Missouri”<sup>9</sup>
- “Mark Twain would also reduce emissions of carbon dioxide (CO”) throughout the MISO footprint [and NOx and SO2 and mercury] . . . .”<sup>10</sup>

Ameren Missouri ignored witness J. Luebbert’s full testimony. Cherry picking from the full *Mark Twain* case serves Ameren Missouri’s case no better. *Mark Twain* was certainly not, as Ameren Missouri seems to suggest, about a project whose only virtue was to pour some renewable energy somewhere into the mix where the project was otherwise uneconomical. The case concerned Ameren Transmission Company of Illinois’ (“ATXI”) application for a CCN to build a transmission line and associated facilities across five Missouri counties.

First, in unique contrast with most cases, much of the material evidence before this Commission in *Mark Twain* was “unbiased.” That is not Staff just talking here. That was this Commission’s express finding of fact there. MISO is not a party here. MISO intervened and was a party in *Mark Twain*. The *Mark Twain* Commission expressly found that MISO’s stakeholders included many stakeholders with “vast differences” in interests and that MISO’s decision to build transmission was “not biased towards simply building

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<sup>8</sup> Ameren Missouri Brief, p. 32; citing Mark Twain Report and Order.

<sup>9</sup> Ameren Missouri Brief, p. 33; citing Mark Twain Report and Order.

<sup>10</sup> Ameren Missouri Brief, pp. 40 and 41; citing Mark Twain Report and Order.

more transmission.”<sup>11</sup> This Commission could hardly make such a finding about Ameren Missouri here.

The Commission’s bias finding was not just a casual observation about one of the interveners in *Mark Twain*. A MISO study formed a substantial part of *Mark Twain*’s evidentiary basis.<sup>12</sup> This Commission found that the study identified a “multi-value portfolio” (“MVP”) of 17 transmission projects that would increase the overall reliability and efficiency of the MISO regional transmission grid, meet public policy demands for renewable energy, and provide economic benefits in excess of the portfolio costs.<sup>13</sup>

In sharp contrast to the case before this Commission now and meeting Ameren Missouri’s dismissive treatment of witness Luebbert’s testimony head on, one basis for approving the Mark Twain project was that its economic benefits exceeded its portfolio costs. In that regard the *Mark Twain* Commission was not comparing just “green energy” benefits to costs in dollars. This Commission was, additionally, expressly comparing the project’s dollars to dollars—what Ameren Missouri now simply dismisses here to do out of hand. There the Commission found that the Mark Twain portfolio was a “no regrets” portfolio, proven by multiple cost-benefit analyses to create “significant benefits in excess of costs across a wide variety of scenarios.”<sup>1415</sup> The *Mark Twain* Commission then compared specific dollars with dollars, naming its findings “Benefits in excess of costs.”

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<sup>11</sup> Mark Twain Report and Order, p. 8.

<sup>12</sup> Mark Twain Report and Order, p. 7.

<sup>13</sup> Mark Twain Report and Order, p. 7.

<sup>14</sup> Mark Twain Report and Order, pp. 8-9.

<sup>15</sup> Ameren frequently touts the decision to acquire the Project as a “no regrets decision.” That may be true from the shareholder’s point of view, but ratepayers will be the party paying for that decision for the next 30 years without the benefit of getting a “return” on the investment.



35. The portfolio is a “no regrets” portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.

36. MISO’s Triennial Review identified benefits of \$21,451,000-66,816,000 associated with the cost of \$8,303,000-\$17,192,000 for the MVP portfolio.

37. The majority of the benefits are found in reducing congestion-driven production costs, providing for more efficient dispatch of generators by using lowest cost generation throughout the MISO footprint. In all, the MVP portfolio creates benefit to cost ratios of 1.8 to 3.0 as identified under MTEP 2011 assumptions, and 2.6 to 3.9 as identified under Triennial Review assumptions. The Missouri ratios are 2.0 to 2.9 and 2.3 to 3.3, respectively.

38. Most of the benefits that will accrue to Missouri are based upon reduced generation costs made possible by construction of the MVP portfolio.<sup>16</sup>

It would be simply impossible for this Commission to make any similar favorable finding here. While it mattered to the Commission there, Ameren Missouri argues that it does not matter now—even though the Ameren Missouri’s only demonstrable need here is an economic one.

Directly apropos the case before this Commission and the reliability issues inherent in a solar facility in Illinois, the *Mark Twain* Commission found that the Mark Twain project “resolve[d] numerous reliability issues.” *Mark Twain’s* reliability Findings of Fact 25 and 26 put the case into sharp contrast with Boomtown. Ameren Missouri’s Boomtown case addresses a possible scenario where Ameren Missouri may be, from time to time, a net purchaser in MISO. The Mark Twain project, on the other hand, involved a 95 mile new 345-kV electric transmission line, a 2.2-mile 161-kV connector line, a substation and related facilities,<sup>17</sup> which, in addition to any questions about renewable and non-renewable resources, addressed numerous efficiency issues, including an existing voltage problem in Missouri. The Commission found:

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<sup>16</sup>Mark Twain Report and Order, p. 16.

<sup>17</sup> Mark Twain Report and Order, p. 6.

25. Specifically, Mark Twain will increase reliability in the northeast portion of Missouri, including Kirksville.

26. Ameren Services determined that the northeastern Missouri area, including Kirksville, would be exposed to low voltages for certain contingency conditions at peak load levels. The existing transmission system has three 161-kV lines that supply Ameren Missouri and rural electric cooperative customers located in northeastern Missouri (including Adair, Kirksville, Newark, Novelty, Emerson, etc.). Ameren Services determined that if certain NERC Category C events occurred during peak load periods, then low voltage conditions would occur in northeastern Missouri that could result in the loss of customer load in the area. The addition of the Mark Twain Project will provide a new 345-kV source to the northeastern Missouri area that will maintain adequate system voltages for the identified NERC Category C contingencies and prevent loss of customer loads.<sup>18</sup>

In summary, the Mark Twain project was based upon an unbiased MISO study and MISO's unbiased direct advocacy for a transmission line that would allow MISO to achieve a broad public interest mission. It would not be unfair or a mischaracterization to say that MISO was among the primary drivers in the case. Specifically, the Mark Twain transmission line project directly addressed MISO's plans and legal requirements imposed on both MISO and on Ameren. The transmission line directly addressed improved efficiency objectives, delivered needed electricity to Missouri customers in Missouri venues, and literally "along the way" opened up opportunities for building still more wind powered resources in Missouri areas offering high wind power potential. Finally, in contrast with the case now before the Commission, *Mark Twain* addressed an existing voltage load problem in Missouri and did so with a project whose revenues would meet its costs.

### **Ameren Missouri's Community Solar Pilot Program**

*Mark Twain* did not hold that pouring some renewable energy into the MISO system, standing alone, sufficed to meet the first Tartan factor. Economics cannot be

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<sup>18</sup> Mark Twain Report and Order, pp. 12-13.

ignored, and Ameren Missouri so admitted when it asked this Commission to take up its Project and its Program in one proceeding. To justify considering its Program and Project in one proceeding, Ameren Missouri's Initial Post Hearing Brief cites to *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval to Expand its Community Solar Pilot Program and Associated Tariff*, ET-2020-0022 ("Solar Pilot Program").<sup>19</sup> In that case, Ameren Missouri requested approval to expand a community solar pilot program. The case was settled by a stipulation to which Staff was a signatory. This case involved an expansion on a subscriber solar Pilot Tariff previously approved by the Commission on October 15, 2016, and approved with modifications on August 17, 2018. The program was fully subscribed. On May 28, 2020, the Commission approved the program as again modified. The tariff involved stated:

The Company will continue to share the risk for undersubscribed Resources as discussed in paragraph 15 of the Amended Unanimous Stipulation and Agreement filed in EA-2016-0207.

With the risk sharing mechanism set out in EA-2016-0207, Staff supported and the Commission approved Ameren Missouri's Community Solar Pilot Program. Obviously, there is a difference between a program and a project that contemplates major construction. But where the identified Project need here is actually only economic, Ameren Missouri's reason here given for considering the Program and Project together is purely economic, and Ameren Missouri cited the Community Solar Pilot Program in support of its argument that the Program and the Project should be considered together, then it is worth considering here: If the need fulfilled through the Project is the ability of the RSP participants to claim renewable attributes from the Project, whether the risk

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<sup>19</sup> Ameren Missouri Brief, p. 50, F.N. 197.

that the project is ultimately uneconomic should be borne by the participants and shareholders, not ratepayers as a whole.

### **Ameren Missouri's Renewable Choice Program**

In defending its Renewable Energy Program, Ameren Missouri's Initial Post Hearing Brief also references the "lessons learned" from its "Renewable Choice program's lack of successful enrollment."<sup>20</sup> In *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval of 2017 Green Tariff*, Case No. ET-2018-0063 ("Renewable Choice Program" or "RCP"), the Commission approved a Stipulation and Agreement for a Renewable Choice Program. Staff agreed to the stipulation. This program was designed to give certain rate classes the ability to subscribe to wind energy. The subscriptions were in addition to, but not a replacement for the customer's ordinary electric service and did not affect the rates due from the subscribers under applicable rate schedules and riders. The subscribers, however, did acquire the renewable energy credits associated with the energy to which they had subscribed.

The Renewable Choice Program involved provisions for risk sharing between Ameren Missouri. In contrast with Boomtown, the RCP Stipulation expressly stated that the signatories intended that to the extent reasonably practical, program costs should be covered by program revenues.

It is the Signatories' intention that to the extent reasonably practical Program Costs shall be covered by Program Revenues. As such, the impact of Program Costs and Program Revenues will be excluded from the determination of the revenue requirement used to set the Company's base rates in any general rate proceeding of the Company. The express intent of the Signatories is to maintain matching of the Program Costs and Program Revenues, such that the Program Revenues received and retained by the Company (because they are excluded from the

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<sup>20</sup> Ameren Brief, pp. 47-48.

revenue requirement used to set base rates) provide full recovery of Program Costs incurred by the Company while causing no impact on non-subscribing customers, except to the extent outlined in the risk sharing provisions of this Stipulation in section 6(vi) below.

Staff supported and the Commission approved the Renewable Choice Program with the risk sharing provisions calculated to address the risks inherent in achieving the signatories' expressly stated intention that the program's revenues cover its costs. Subscription programs are different from a construction project. But it was Ameren Missouri who cited the foregoing cases for the proposition that the Commission should now consider the Program together with the Project in one proceeding. Ameren Missouri's argument is that the Program and Project will help rate payers by shifting *some* of the Project's costs over to the Program. Yet the Program here does not shift all risks, or even a majority of the risks, to the subscribers. What was the lesson Ameren Missouri learned from the Renewable Choice Program? Ameren Missouri cited the case because it apparently taught something. What does it teach with respect to a Project that addresses an economic need with an uneconomical solution? Ameren frequently touts the decision to acquire the Boomtown Project as a "no regrets decision." But its Program does not bring about any such result. Is that fact related to the lessons learned in the Renewable Energy Program? Staff would reply that while the Boomtown Project might represent a "no regrets decision" from the shareholders' point of view, the ratepayers who will be paying for that decision for the next 30 years without the benefit of getting a "return" on the investment may have a different view.

A consideration of these cases and distributing risk brings this discussion, finally, to a constant refrain in Ameren Missouri's Initial brief. Ameren Missouri's initial brief includes a large amount of discussion on the exposure of risk if the project is not

approved, but the discussion is misleading. Because of Ameren Missouri's MISO participation, high market prices during periods of elevated demand will be realized by ratepayers regardless of the acquisition of the Project. Elevated fuel costs are not mitigated by this project, because Ameren Missouri's existing generation will continue to be dispatched by MISO regardless of the acquisition of Project. Adding an intermittent generation resource in Eastern Illinois does not magically insulate Ameren Missouri's ratepayers from system reliability risk. However, approval of the Project exposes ratepayers to the expected risk that they will pay for an asset that is not justified.

### **CONCLUSION**

Ameren Missouri's Project will not allow non-renewable resources to be removed from rate base and will not allow Ameren Missouri to correctly tell any non-subscribing Missouri customer that s/he is using any less non-renewable energy than before. So the closest that Ameren Missouri's Project comes to addressing a demonstrable "need" is to allow Ameren Missouri to avoid being, from time to time, a MISO net purchaser. That is solely an economic need. But the Project may not be actually needed for that limited purpose for two or more years after it is in rate base, and the risk cannot be ignored here that the asset will become obsolete and have to be duplicated well before it is out of rate base. Finally, its revenues will not cover its costs. The case defeats itself. If its stated need is economic, then the solution must be economical. If the solution is not economical, Ameren Missouri's solution does not meet its stated need. Staff respectfully submits that the Commission should reject the application.

**WHEREFORE**, Staff respectfully submits this post-hearing reply brief.

**Respectfully Submitted,**

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**CERTIFICATE OF SERVICE**

The undersigned by his signature below certifies that the foregoing pleading was served upon all counsel of record on this March 17, 2023, by electronic filing in EFIS, electronic mail, hand-delivery, or U.S. postage prepaid.

/s/ Paul T. Graham