

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
February, 2016.

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

ORDER GRANTING MOTION FOR PARTIAL DISPOSITION

Issue Date: February 10, 2015

Effective Date: February 10, 2015

The Commission is dismissing the application as to any claim under Section 393.190.1¹ because Section 393.190.1 does not grant the Commission authority over the activities described in the application. The application seeks the Commission's authorization for South Central MCN LLC ("SCMCN") to transmit electricity for gain as an electrical corporation.² The application also seeks the Commission's authorization for SCMCN to purchase assets from the City of Nixa, Missouri ("Nixa") for transmitting electricity ("purchase"). SCMCN has shown that Section 393.190.1 does not apply to the purchase.

¹ RSMo Supp. 2013.

² That part of the application is not at issue in the motion or this order. Transmission is subject to the Commission's authorization under Section 393.170, RSMo 2000, which provides that the Commission embodies its "approval and permission" in a "certificate of convenience and necessity."

Filings

SCMCN filed the application.³ SCMCN filed the *Motion for Partial Disposition* (“motion”)⁴ with supporting suggestions.⁵ The Commission received responses to the motion from the Board of Public Utilities of the City of Springfield, Missouri (“Springfield”)⁶ and the Commission’s staff (“Staff”).⁷ SCMCN filed a reply.⁸

Standard

The motion asks for a ruling under Commission regulation 4 CSR 240-2.117(1).⁹ That regulation provides that SCMCN may prevail on any claim or defense without a hearing, if SCMCN establishes facts that no party disputes, and such facts entitle SCMCN to a favorable determination.¹⁰ The regulation also requires SCMCN to show that the determination is in the public interest.¹¹ The verified pleadings, the motion and response, and the prepared testimony establish the following facts, as to which no party has raised a genuine dispute.

³ Electronic Filing Information System (“EFIS”) No. 1 (August 19, 2015) *Application*.

⁴ EFIS No. 45 (December 18, 2015) *Motion for Partial Disposition*.

⁵ EFIS No. 46 (December 18, 2015) *Memorandum in Support of Motion for Partial Disposition*.

⁶ EFIS No. 50 (January 15, 2016) *City Utilities Response in Opposition to SCMCN Motion for Partial Disposition*.

⁷ EFIS No. 52 (January 15, 2016) *Staff Response to South Central MCN LLC Motion for Partial Disposition*.

⁸ EFIS No. 53 (January 22, 2016) *Memorandum in Support of Motion for Partial Disposition*.

⁹ SCMCN could have voluntarily dismissed any part of the application without the Commission’s order by filing a notice of dismissal before filing prepared testimony. 4 CSR 240-2.116(1). But after the filing of prepared testimony, voluntary dismissal is effective only with the Commission’s order, or with all parties’ consent. 4 CSR 240-2.116(1).

¹⁰ 4 CSR 240-2.117(1).

¹¹ 4 CSR 240-2.117(1)(E).

Findings of Fact

1. SCMCN is a Delaware limited liability company¹² operating as a start-up transmission company with a business plan to serve wholesale customers.¹³
2. Nixa is a home rule charter city¹⁴ that owns and operates a municipal electric utility system with 14 employees and 9,000 customers.¹⁵
3. On August 14, 2015, SCMCN and Nixa entered into an agreement under which SCMCN will purchase, from the City, certain existing transmission assets (“the assets”)¹⁶ consisting of a single transmission line operating at 69 kV with five segments totaling 10.82 miles in length, and related facilities.¹⁷
4. Currently, the assets connect Nixa’s system with Nixa’s providers of wholesale electricity.¹⁸
5. SCMCN’s plan is to own the Assets, transfer functional control of the Assets to the Southwest Power Pool (“SPP”)—a regional transmission organization—and integrate the assets into the SPP transmission system.¹⁹

¹² EFIS No. 42 (December 10, 2015) *Supplemental Direct Testimony of Edward M. Rahill on Behalf of South Central MCN*, exhibit EMR-1.

¹³ EFIS No. 40 (December 10, 2015) *Direct Testimony of Noman L. Williams on Behalf of South Central MCN LLC* page 5 line 10-11; page 9 line 1 to 9.

¹⁴ EFIS No. 45 (December 18, 2015) *Motion for Partial Disposition* page 1 paragraph 2; and EFIS No. 50 (January 15, 2016) *City Utilities Response in Opposition to SCMCN Motion for Partial Disposition* page 1 paragraph 2.

¹⁵ EFIS No. 9 (August 21, 2015) *Direct Testimony of Robert E. Pender on Behalf of South Central MCN LLC* page 3 line 19 to 20.

¹⁶ EFIS No. 1 (August 19, 2015) *Application* Appendix A Recitals, first paragraph.

¹⁷ EFIS No. 40 (December 10, 2015) *Direct Testimony of Noman L. Williams on Behalf of South Central MCN LLC* page 2 line 4 to page 3 line 4.

¹⁸ EFIS No. 40 (December 10, 2015) *Direct Testimony of Noman L. Williams on Behalf of South Central MCN LLC* page 2 line 12 to 14.

¹⁹ EFIS No. 36 (December 10, 2015) *Direct Testimony of Carl Huslig on Behalf of South Central MCN LLC* page 4 line 12 to 14; and EFIS No. 40 (December 10, 2015) *Direct Testimony of Noman L. William on Behalf of South Central MCN LLC* page 3 line 13 to 15.

Conclusions of Law

Under those facts, the purchase is not subject to Section 393.190.1 because Section 393.190.1 requires the Commission's authorization only when a public utility grants an interest in certain assets:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.²⁰

The Commission reads that language in its plain or ordinary and usual sense, except for technical language having a peculiar and appropriate legal meaning, to which we give technical import.²¹ Section 393.190.1 specifically addresses a type of entity and its activity.

A. Public Utility

The entity governed—that which the Commission regulates—is a public utility. The term “public utility” generally means an entity that owns or operates facilities for the transmission of electricity,²² like SCMCN, but does not include Nixa, because Nixa is a municipality. Municipalities were never constitutionally included within the Commission's original enabling statutes,²³ and were legislatively excluded in 1949.²⁴

²⁰ Emphasis added.

²¹ Section 1.090, RSMo 2000.

²² Section 393.120, RSMo 2000; and Section 386.020.1(14), (15), (43), RSMo Supp. 2013.

²³ *City of Columbia v. State Pub. Serv. Comm'n*, 43 S.W.2d 813, 816 (Mo. Div. 1, 1931), citing Mo. Const. (1875) Art. IV Section 28. That provision was the clear title requirement, which now appears at Mo. Const. Art. III Section 23.

Today, the Commission has jurisdiction over a municipality for specific exercises of authority only. For example, SCMCN cites the Commission's jurisdiction over the supply of retail electricity, and the Commission's authority to order a change of supplier to²⁵ or from²⁶ a municipality. Such authority comes with strict limitations:

Except as provided in this section, nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting or management of any such municipally owned or operated electrical system, and nothing in this section, section 393.106, and section 394.315 shall affect the rights, privileges or duties of any municipality to form or operate municipally owned or operated electrical systems.²⁷

The Commission has only the authority that the statutes confer²⁸ and that authority does not include a municipality like Nixa.

Therefore, the Commission concludes that Nixa and its activities are not within Section 393.190.1.

B. Purchase

The activity governed—that which must occur only with the Commission's authorization—is also not within Section 393.190.1.

Section 393.190 provides that SCMCN must have the Commission's authorization to grant certain interests in certain assets. Specifically, SCMCN must have authority from the Commission to:

²⁴ Section 393.13, H.B. 2165, 65th Mo. Gen. Assem. That legislation was among the revision bills that introduced the current chapter system to the Revised Statutes of Missouri, hence the unusual numbering of the bill and the statute, and their omission from 1965 Mo. Laws.

²⁵ Section 393.106.2, RSMo 2000.

²⁶ Section 91.025.2, RSMo 2000.

²⁷ Section 91.025.2, RSMo 2000.

²⁸ *Public Serv. Com'n of Missouri v. St. Louis-San Francisco Ry. Co.*, 256 S.W. 226, 227 (Mo. banc 1923).

. . . sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of [certain assets], nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility [. ²⁹]

Springfield does not argue that SCMCN will sell, assign, lease, transfer, dispose, mortgage or encumber any asset. The undisputed facts show that SCMCN will purchase the assets, which is outside the plain language of Section 393.190.1.

Springfield argues that SCMCN will merge or consolidate the assets with Nixa. But that characterization is negated by the undisputed facts. The undisputed facts show that the assets are already physically or merged or consolidated with Nixa's system and the purchase will sever ownership from Nixa. ³⁰

Springfield also argues that Section 393.190.1 also governs a public utility's acquisition of interests in property. In support, Springfield analogizing to a federal statute that provides:

No public utility shall, without first having secured an order of the Commission authorizing it to do so—

* * *

(C) purchase, acquire, or take any security with a value in excess of \$10,000,000 of any other public utility [. ³¹]

The emphasized language, as SCMCN notes, is absent from Missouri law.

Only an abundance of caution led SCMCN to cite Section 393.190.1. That statute does not apply to the purchase. Therefore, the Commission concludes that SCMCN's purchase is not within Section 393.190.1.

²⁹ Emphasis added.

³⁰ Also, the legislative history discussed above suggests that Nixa is not a "corporation, person or public utility" within chapter 393, RSMo, and Springfield offers no authority to show otherwise.

³¹ 16 USC Section 824b(a)(1). (Emphasis added).

C. Public Interest

The Commission's regulation 4 CSR 240-2.117(1) also requires SCMCN to show that granting the motion is in the public interest. The public interest appears in the statutes that limit the Commission's authority, and includes the conservation of ratepayer and party resources by avoiding needless litigation. Those objectives occur if the Commission grants the motion. Therefore, granting the motion is in the public interest.

Ruling

SCMCN asks for the Commission's order stating that Section 393.190.1 does not apply, but something more than a mere declaration must follow from what SCMCN has shown. A tribunal that lacks power to determine a claim can only exercise its inherent power to dispose of the claim without reaching the merits.³² That disposition is a dismissal, notwithstanding that the motion sought a summary determination.³³ Summary determination determines the merits of a claim without a hearing, and has a correspondingly higher burden of proof. Dismissal requires a mere preponderance of the evidence.³⁴ Having carried the higher burden of proof for summary determination, SCMCN is entitled to dismissal of any claim related to Section 393.190.1.

THE COMMISSION ORDERS THAT:

1. The *Motion for Partial Disposition* is granted and any claim under Section 393.190.1, RSMo Supp. 2013 is dismissed.

³² *Moore v. Missouri Highway & Transp. Comm'n*, 169 S.W.3d 595, 599 (Mo. App., S.D., 2005).

³³ *Borges v. Missouri Pub. Entity Risk Mgmt. Fund*, 358 S.W.3d 177, 183-84 (Mo. App., W.D. 2012). That opinion addressed Missouri Supreme Court Rule 74, to which the regulation on summary determination is sufficiently similar to make cases interpreting the rule helpful. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

³⁴ *Charron v. State*, 257 S.W.3d 147, 151 (Mo. App., W.D. 2008).

2. This order shall be effective when issued.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

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

Jordan, Senior Regulatory Law Judge