BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of Union Electric Company for Permission and Authority to Construct, Operate, Own and Maintain a 345 Kilovolt Transmission Line in Maries, Osage, and Pulaski Counties, Missouri ("Callaway-Franks Line").	)	Case No. EO-2002-351

INITIAL BRIEF OF INTERVENORS CONCERNED CITIZENS OF FAMILY FARMS AND HERITAGE

I. JURISDICTION

Ameren UE (Applicant) has invoked the jurisdiction of this Commission under Section 393.170, RSMo 2000, for Commission review and approval of its proposed plan to build a 54 mile long 345,000 volt electrical power transmission line through three counties (Osage, Maries and Pulaski) in Central Missouri. Such Application, filed January 18, 2002, seeks "permission and authority to construct, operate, own and maintain the proposed transmission line" specifically pursuant to Section 393.170 (Application, page 1, 6), and all parties agree that such request is for a "Certificate of Convenience and Necessity" to be based upon a finding that construction, ownership, operation and maintenance of this high voltage transmission line is "in the public interest." (See Joint List of Contested Issues, filed by Staff on behalf of all parties.)

Section 393.170 requires prior approval of the Commission for this project:

> 1. No...electrical corporation...shall begin construction of a...electric plant...without first having obtained the permission and approval of the commission.

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> 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...is necessary or convenient for the public service. The commission may in its order impose such condition or conditions as it may deem reasonable and necessary... .

Applicant's proposed construction of this transmission line, denominated the "Callaway-Franks line," constitutes proposed construction of its "electric plant" under Section 393.170.1, RSMo, by virtue of the definition of "electric plant" contained in Section 386.020(11), RSMo:

> (11) **Electric plant** includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

As a regulated "electrical corporation" described in Section 386.020(12), RSMo, Applicant must obtain a Certificate of Convenience and Necessity from this Commission granting to Applicant permission and approval to begin construction of the Callaway-Franks line. This Commission has jurisdiction over this matter.

The question to be determined by the Commission is whether it has been demonstrated that the proposed Callaway-Franks line is necessary or convenient for the public service. The answer to the question turns on whether affirmative evidence establishes that the proposed Callaway-Franks line serves the public interest.

II.

ROLE AND RESPONSIBILITY OF THE COMMISSION

The role of the Public Service Commission in this matter is significant. Historically, in matters to which the statutory authority of the Commission to regulate extends, the dominating

purpose for the Commission is to promote the public welfare. *State ex rel. Kansas City v. Public Service Commission*, 257 S.W. 462, 463 (Mo. banc 1923). In its role as protector of the public welfare, PSC authority extends not only to general determinations of public interest and welfare, but also "to correction of abuse of any property right of a public utility." *Id.* In this case, in addition to the obligation of the Commission to determine whether the construction serves the general public interest, this Commission must also be satisfied that exercise of rights granted to Applicant in conducting its business are not being abused to the detriment of the public. See *State ex rel. Missouri Cities Water Company v. Hodge*, 878 S.W.2d 819 (Mo. banc 1994). Pursuant to Article I, Section 26, Mo. Const., and Chapter 526, RSMo, one of the most important "rights" granted to Applicant is the power of eminent domain. A substantial portion of the proposed 54 mile transmission line will require exercise of the power of condemnation by Applicant in order to construct the proposed line. The taking of such land for construction of its line by virtue of the right of eminent domain requires not only a determination of public use but that such power is being exercised only out of public necessity. *Newby v. Platte County*, 25 Mo. 258 (1857). Mere convenience, efficiency or benefits for or to Applicant are irrelevant. Any proposed exercise of this power is subject to Commission scrutiny because this Commission's approval and permission by granting of a Certificate for Convenience and Necessity is tantamount to approval of this utility's use of its right to the power of eminent domain. Control of such power by this Commission in the public interest is crucial to the PSC's regulatory role.

While this Commission has only the authority granted to it by the legislature under statute, and is not authorized to "manage" the affairs of regulated utilities, the determination of whether Applicant's proposal meets the test of being in the public interest falls squarely within those

responsibilities delegated to this Commission by the legislature. "It seems clear that the guiding star of the Public Service Commission law and the dominating purpose to be accomplished by such regulation is the promotion and conservation of the interests and convenience of the public." *State ex rel. Crown Coach Company v. Public Service Commission*, 179 S.W.2d 123, 128 (Mo. App. W.D. 1944). A certificate should be granted or refused solely on a consideration of what best serves the public interest. *State ex rel. Missouri, Kansas and Oklahoma Coach Lines v. Public Service Commission*, 179 S.W.2d 132 (Mo. App. W.D. 1944). In regulating a monopoly in the public interest, certain decisions of regulated entities cannot and should not be solely left to the discretion of such public utility's management. For this policy reason, this Commission "stands in the shoes" of such management for determinations of just and reasonable rates, level and quality of service and, most importantly, certificates determining public convenience and necessity for new projects under Section 393.170, RSMo. In such efforts, the role of the Commission, acting in the spirit of the declared legislative policy creating the Public Service Commission, is protection of the public; any protection which might be given to the interests of the regulated utility is purely incidental. See *State ex rel. Electric Company of Missouri v. Atkinson*, 204 S.W. 897 (Mo. banc 1918). This regulatory scheme "is held to be a practical system, designed, as stated, to promote the public good, and the particular facts in each case are to be regarded in applying it." *Id.*

III.

BURDEN AND STANDARD OF PROOF

Determinations of the public interest in granting Certificates of Convenience and Necessity under Section 393.170, RSMo are required to be made only after evidentiary hearing. Section 393.170.3, RSMo. Such hearing is a contested case as defined in Chapter 536, RSMo, the

Administrative Procedures Act. The Commission's decision, under the requirements of Chapter 536, RSMo, requires adherence to rules regarding burden and standard of proof by evidence before the Commission.

Where the burden of proof is not specifically fixed by statute (as is the case under Section 393.170), it is generally the party seeking to establish a fact, an issue or a proposition who will bear the initial burden of going forward with evidence to establish that party's case. Applicant in this case clearly bears the burden of proof on its proposition that the proposed Callaway-Franks high voltage transmission line serves the public interest. This burden includes not only the initial burden to come forward with a submissible case to carry its burden of proof, but Applicant also bears the burden of persuasion and the risk of non-persuasion. Unless Applicant's evidence satisfies the Commission that Applicant has affirmatively shown that the proposed line serves the public interest, including a determination that Applicant's evidence overcomes all relevant doubts raised by evidence to the contrary, Applicant fails of its burden of proof and this Commission's Certificate of Convenience and Necessity must be denied.

In administrative proceedings under Chapter 536, the quantum of proof necessary for Applicant to prevail on its proposition that the proposed Callaway-Franks line serves the public interest is the "preponderance of the evidence" standard. See *Fujita v. Jeffries*, 714 S.W.2d 202, 206 (Mo. App. E.D. 1986); *Vaughts v. Vaughts, Inc.*, 938 S.W.2d 931, 941 (Mo. App. S.D. 1997); *Harrington v. Smarr*, 844 S.W.2d 16 (Mo. App. W.D. 1992). Indeed, unless otherwise stated, the "preponderance of evidence standard" is the usual standard to be applied in any civil (including administrative) proceeding. See *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992); *Aetna Casualty Insurety Company v. Bollig*, 878 S.W.2d 837, 839 (Mo. App. S.D. 1994).

> A preponderance of the evidence is that which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not.

Fujita, supra at 206; *Wollen, supra* at 685; *Aetna, supra* at 839; *Tipton v. Barton*, 747 S.W.2d 325, 332 (Mo. App. E.D. 1988).

Under the preponderance of evidence burden,

> It is well established that the burden of proof means the obligation to establish the affirmative of an issue involved in an action and it rests on the party alleging the facts constituting that issue.

Motley v. Colley, 769 S.W.2d 477, 479 (Mo. App. W.D. 1989) (quoting *Clapper v. Lakin*, 343 Mo. 710, 123 S.W.2d 27, 33 (1938)).

IV.

SUMMARY OF ARGUMENT

Based upon the jurisdiction of this Commission over questions of public interest, as invoked by the Applicant pursuant to Section 393.170, RSMo, and subject to the principles stated above requiring Applicant to affirmatively establish by a preponderance of evidence that the proposed Callaway-Franks high voltage electrical power line is in the public interest, it is clear that Applicants have utterly failed to establish their Application. Ameren's Application for Certificate of Convenience and Necessity is so insufficient on its face, and so lacking in evidence of reflective analysis of social and local economic impact, that this Commission cannot determine under the evidentiary standard whether the public interest would be served by this Application or not. The Application does not comply with Commission regulations concerning the content of the Application to give notice of details important to a determination of whether the Application is in the public

interest or not. Even the ultimate location of the line remains a closely guarded secret. It is impossible for this Commission to find and state facts, and articulate conclusions therefrom, that would establish that this line serves any public interest that would justify its extreme adverse impacts on the public in the local community. Applicant has failed to meet its burden of proof on this issue.

Further, Applicant has utterly failed to respond to the substantial evidence of Intervenors showing actual public harm inflicted upon small farms, small towns and the rural lifestyles of Missouri residents in the path of the proposed line. No attempt to address these harmful impacts is made by Applicant, who refuses even to quantify for the Commission any proposed benefit to be balanced against the substantial harm caused to the public interest. Opposition in the counties where this Callaway-Franks line is proposed to be constructed is overwhelming; and none of the impacted citizens are customers of Applicant Ameren UE. No Missouri citizen in the impacted three county area will benefit from the building of the proposed line: This is not a "distribution line" bringing electricity to these communities, but is a high voltage "transmission line" designed solely to move power interstate through Missouri and over the regional electrical grid. Moreover, no other property owner, citizen, rate payer or member of the public in Missouri obtains direct tangible benefit from this line as a customer, because Applicant's Application and evidence establishes that only "enhanced reliability" is sought to be gained by "improving" transmission flows through what is currently regarded by Applicant's overseers in other states as a potential "bottleneck" in the national electrical grid. While "reliability" and Applicant's desire to correct "problems" related to regional interstate electrical flows is a worthy subject of improvement, it is not the paramount issue in determining public interest and necessity. Where mere proposed "enhancements" to system reliability create such disproportionately adverse impacts as those here shown, it behooves the

Applicant to demonstrate by evidence that all other reasonable alternatives have been explored, weighed and found unavailable; not based upon a public utility's representations that the PSC can "trust us" on the analysis of what is best, but upon evidence which articulates and supports the analysis, reasoning and conclusions reached. By its own admission, adverse impacts to the people and communities in the path of the proposed Callaway-Franks line were never considered by Applicant in choosing its route, and no alternative route or solution was weighed on any basis other than expense to the utility. Indeed, it was solely lower cost to the utility that forms the basis of the proposal to build the Callaway-Franks line rather than another equally available solution. (See Tr. 102-103, 107-108, 112-113, 114, 115, 128.) While achieving enhancement of reliability at the lowest cost is a worthy goal, it does not dominate over all other societal considerations and is certainly not the only or even the main factor to be considered in determinations of the public interest. This Application, based solely on the cheapest solution for the utility in disregard of all other factors must fail as disregarding the public interest.

Additionally, although Applicant insists that its sole goal is achievement of "reliability" by enhancing flows which are presently claimed to tax the capacity of the existing Bland-Franks transmission line, Applicant has not even evaluated the proposed option of building a new 345 kV transmission line parallel to its existing Bland-Franks line, a short distance away from the proposed Callaway-Franks line, instead of through the homes and communities of Intervenors. Applicant concedes it never really considered this option, (Tr. 102-103, 107-108 114, 115) and it conducted no analysis of whether such a shorter new Bland-Franks line constructed in an area already depopulated by its existing Bland-Franks line would cause less social impact and harm. (Tr. 114-115, 120-121.) And, although repeatedly urged to do so by Intervenors, Applicant even now refuses

to conduct any such evaluation, which may be assumed to demonstrate the adequacy of that obviously superior and available Bland-Franks solution. This Commission may safely assume that the absence of any evaluation of a Bland-Franks line during the planning of this Application, in light of the current choice of Applicant to ignore that option and instead do actual harm to the public, constitutes an admission that a new Bland-Franks transmission line would completely serve the interests of reliability which Ameren purports to pursue in its Application. The alternative solutions must be ignored because Bland-Franks does not serve Ameren's interest in increasing its future financial profits.

Finally, the evidence and inferences are clear and overwhelming that this Application of Ameren is about greed rather than need. Under the pretext of enhancing reliability of the regional electrical grid, Applicant actually is primarily pursuing its long term economic goals of acquiring more customers in the Central Missouri area not currently served by them, so as to displace service currently provided by others and thereby gain market share. This Application is most certainly not about a solution to the capacity and reliability concerns on the existing Bland-Franks line; it is clearly about acquisition by condemnation of a direct link to Linn, Missouri from the Callaway Nuclear Plant over the Missouri River, so as to provide Ameren the transmission capability to capture part of a growing Jefferson City/Lake of the Ozarks market. Ameren UE has carefully avoided responding to Intervenors' allegations in this regard; however, Ameren also cannot deny the allegation that this is their ultimate goal. It is the prospect of a new transmission line for Ameren between the Callaway Nuclear Plant and a new substation at Linn, Missouri that is the tail wagging this dog, and this primary objective of Applicant bears no relation whatsoever to correcting problems on the existing Bland-Franks line. Applicant's duplicity in disguising its true goal of seizing upon

economic advantage as a benign "enhancement to reliability" of the interstate electrical grid should not be tolerated by this Commission and Applicant's clever strategy should be flatly rejected.

For the foregoing reasons, and based upon the law and evidence as further hereinafter set forth, Ameren UE's Application for Permission and Approval to construct and maintain a new high voltage power line through the communities proposed in its Application should be found not to be in the public interest, and the request for a Certificate of Convenience and Necessity should be denied.

V.

APPLICANT'S EVIDENCE IS INSUFFICIENT TO SHOW ITS PROPOSED LINE SERVES THE PUBLIC INTEREST OF MISSOURI

Ameren UE's Application makes no reference to, nor does it plead facts related to, the public interest of Missouri to be served by this proposed line. The Application simply states the line should be built. The Application's only reference to any public necessity is in paragraph 11, which states that it is necessary to provide reliable service to Ameren UE's customers and to relieve overloading on the nearby Bland-Franks line. Ameren has neither in its Application nor its evidence identified any of its actual "customers" whose interests are to be directly served by this line. The evidence instead demonstrates that what Applicant is actually saying is that any enhancement to reliability serves and benefits customers of utilities accessing the regional electrical grid. In other words, the need for the enhanced reliability from the proposed line is indirect and not direct to Ameren's and other utility's customers. While Intervenors accept for the sake of argument the Applicant's suggestion of "indirect benefit," and supports the propriety of enhancements to assure reliable service, the value to the Missouri public of such enhancements cannot be presumed to be worth any

cost no matter how high. Instead, it is up to this Commission to balance the alleged conceptual value and benefit which may inure indirectly to the public generally, against the direct burdens and actual adverse impacts placed upon those members of the public whose property will be taken for the line. The adverse social, environmental and aesthetic harm caused within Missouri by this proposed new high voltage transmission line is manifest. Where, as here, the value of the enhanced reliability is almost exclusively to customers in other regions and in other states, and where that value is in any event merely one of "enhancement" of the system, rather than of correction of outages or actual failures of the system, careful consideration of the details of the adverse impacts of the proposed new line is critical to protection of the public interest.

The sole basis for Applicant's assertion that its proposal is convenient, necessary to the public service and in the public interest is a Joint Study of purported overloading on the Bland-Franks line alleged to have been conducted by Ameren UE and Associated Electric Cooperative, Inc. (Direct Testimony of Charles Mitchell, P.E., Vol. 4, Tr. 97; Exhibit 1-P.) As evidence of any careful study and analysis of the problem and of any available options for its solution, this document is worthless. First, the document is, even at the time of hearing in this case, in "draft" form only. It is therefore possible that (contrary to PSC Rule 4 CSR 260-2.060 requiring a complete final plan) it may change even after the plans and proposals it purports to form the basis for are approved by this Commission. Its date of preparation is uncertain. The evidence indicates the draft in the record was prepared April 30, 2002. (See Schedule 4, page 1-9, Exhibit 1-P; Tr. 99.) To the extent this "draft" document, prepared four months after the date of filing the Application requesting approval in this case, is to be relied upon as any evidence of analysis of Applicant's plan, the Commission should be dubious of its value. The report has no relevance.

The content and structure of the report further demonstrate the need for skepticism as to its probative value. According to Mr. Mitchell, the matter of overloading on the Bland-Franks line had been the subject of the Joint Study for some period of time. The first sentence of the report would indicate (by use of 1999 and 2000 flows as indicia of problems on the Bland-Franks line) that the analysis may have begun in 2001. However, the first sentence on Schedule 4, page 2, Exhibit 1-P, shows the study was being performed as early as June of 2000. (Results of the computer simulations referenced in that first sentence on page 2 appear to have been done in June of the year 2000.) On page 2 of Schedule 4, the report states that the computer simulation testing was done with regard to seven separate options. Notably absent from that list of options is the addition of the new Callaway-Franks 345 kV line proposed in the Application. This was not an option studied, at least according to the Joint Study report. More interestingly, option "number 2" which was studied was to "add a second Bland-Franks 345 kV line." (Schedule 4, page 2.) Indeed, the report proceeds to state that "based on the results of the simulations, the study group agreed to further investigate options 1, 2, and 6." *Id.* Options 3, 4, 5 and 7 were discarded as not being good alternatives. *Id.* Additionally, certain alternatives described as "Quick Fix Solutions to Reduce MW Flow in Bland-Franks" were also considered and rejected as insufficient. (Schedule 4, page 3-4.) The Joint Study report to this point, therefore, indicates only that computer analysis identifies acceptable options for solution of the loading problems at the Bland-Franks line which included addition of a second Bland-Franks 345 kV line between the Bland substation and the Franks substation (the actual location of the loading problem), but specifically did not include the proposed Callaway-Franks line as an option at all. The proposal contained within Ameren UE's Application was not an option developed from the computer simulations contained in and conducted for the Joint Study report. The proposed solution in the

Application arose after the scientific portion of the study was concluded. The report therefore provides no support to the Application whatsoever.

Curiously, however, on page 4 of Schedule 4 of the Joint Report, without any reference as to when or how a new Callaway-Franks 345 kV line became an option, the Report baldly states its "conclusion": "The result of the study was to build a Callaway-Franks 345 kV line..." This is the entire analysis given to the Callaway-Franks option in the Joint Report. It appears that the Callaway-Franks line option was not even thought to be an option when the analysis was done, but rather became the option at some point thereafter. This sudden interjection into the report of a new and previously unstudied option is explained at page 59, Schedule 4, which contains a May 25, 2001 letter of intent reflecting an understanding (reached approximately a year after the analysis) between AECI and Ameren UE "to move forward jointly with AECI to build the new Callaway-Franks 345 kV line." The insertion of this later agreement, to build a heretofore unexplored and unstudied option, was confirmed in testimony by Mr. Mitchell, who indicated the report was not put in its final form until approximately October of 2001. (Tr. 105.) On the evidence, it was not the scientific Joint Study that selected the solution; it was solely the economic and financial benefits of the chosen solution to Ameren UE and AECI that selected the solution in the Application. (Tr. 102-103, 107-108, 111-112, 114-116, 121-122, 128.)

The Joint Study relied upon by Ameren UE as the basis and justification for its proposed Callaway-Franks line constitutes no support whatsoever for either the need or the propriety of the line proposed in the Application at that location. The study only models the overloading problem and studies options which do not include the option chosen. In mid-2000 the only options seriously under consideration were those three referenced on page 2 of Schedule 4, which included a second

Bland-Franks line but did not include a Callaway-Franks line. The discussion of options and the reasons for accepting some and rejecting others makes no reference whatsoever to a Callaway-Franks 345 kV line solution. *Id.* However, the option of a Callaway-Franks 345 kV line did arise; not as a result of the study, nor as a product of analysis of that option in the study, but purely as a result of an economic management decision reflected in the letter of intent of May 25, 2001. (Schedule 4, page 59-62; Tr. 128.) The option to build a Callaway-Franks line was never the product of any search for the best electrical solution to the overloading of the Bland-Franks line, nor any effort to enhance reliability of the system, nor of any analysis of the public interest, but was purely a product of an irresistible financial incentive: AECI and Ameren abandoned any search for reliability and the best electrical solutions when it was discovered that AECI and Ameren could develop an entirely new and financially rewarding solution by use of long dormant and forgotten easements obtained by AECI more than 20 years earlier. Once Ameren realized it could expand its territory (and profits) by building an entirely new line between the Callaway Nuclear Plant and Linn, and could gain "cover" for this new and unneeded line by attaching it to the AECI easements, any hope for consideration or analysis of the public interest was gone. Ameren's corporate economic priorities and financial welfare superceded all engineering analysis, scientific inquiry and social culture/aesthetic and environmental concerns.

Intervenors do not dispute that the Applicant's proposed Callaway-Franks line "works" in the best interests of Ameren UE and of AECI. However, it is important to note that AECI is not subject to the jurisdiction and regulation of the Public Service Commission, and this Commission should therefore take absolutely no interest in promoting the financial interests of AECI or their customers. (Tr. 378-379.) As for Ameren UE, this Commission's role is to protect the interest of

the public, not the interests of that utility. While the Commission may remain respectful of the rights, powers and privileges of Ameren UE as a private investor-owned business to make its own business decisions, the question in this case is whether the Public Service Commission, in seeking not just profit but public welfare, would itself pursue the option selected by Ameren. As protector and guardian of the interests and welfare of the public, it is this Commission and not Ameren that decides whether the option chosen is the "best" option, and whether the option selected is adequately supported and well thought out in protection of the public interest. Intervenors believe this Commission would not itself consciously select the more harmful solution over less harmful alternatives.

The Joint Study report is entirely lacking in credibility - - it forms no basis for and provides no support to the Ameren UE Application. Further, all of Ameren UE's witnesses agree that no effort whatsoever was made to analyze or evaluate either the public acceptability of their solution or the public harm, injury and impact such solution might have on members of the public. Ameren neither knows nor cares whether this line will harm Missouri citizens. While Mr. Geoffrey Douglass testified as to efforts made by Ameren to "sell" the idea of the line to property owners who would be burdened by it, he made it absolutely clear that Ameren has never considered the adverse impact of the line on citizens where it is located, and would not allow the public to determine where to locate the line to do the least harm. (Tr. 296.) While Mr. Douglass has handled the issues of public concern and public rejection of the line in an accommodating way, he and Ameren have done nothing to accommodate those concerns. They instead assert they can be trusted to accommodate the public. The rejection of the line by the persons burdened by it is not considered a factor, and the line will be built regardless of any local concerns. Stripped of Mr. Douglass' smiling face and

pleasant demeanor, Ameren has simply told the public and this Commission that this project will be completed and that they must learn to live with it. Intervenors submit that, regardless of Ameren's posturing, Ameren has shown utter disregard for the public interest and outright contempt for those members of the public residing in the path of the proposed Callaway-Franks line. They cannot be trusted to subordinate their financial motives in this Application to the interests of the public.

In summary, under all of the evidence, and particularly the testimony of Mr. Mitchell and Mr. Douglass on behalf of Ameren, no credible evidence of any scientific evaluation of the problem of loading on the Bland-Franks Ameren UE line was performed or analyzed subsequent to discovery of the "economically superior" solution of generating economic benefit for both AECI and Ameren UE through the Callaway-Franks option. Any consideration of need gave way to considerations of greed. This hardly satisfies the Applicant's burden of showing thoughtful evaluation and consideration of the public interest. Further, Ameren's continued refusal to even consider and advise this Commission of the propriety of a Bland-Franks line addition requires the conclusion that Applicant is here entirely driven by economic greed, and that its Application therefore cannot be found by the preponderance of evidence to be in the public interest.

Nor does the Application gain any support by its endorsement and recommendation of approval by PSC Staff. PSC Staff Analyst Mr. Ketter testified in support of the Application and in support of the proposed Callaway-Franks 345 kV line. His testimony should be disregarded for two reasons. First, by his own testimony, Mr. Ketter has simply examined the Joint Study report and testing performed pursuant to it by Ameren and AECI. As previously explained, that report and analysis has no value in determining whether the construction of the Callaway-Franks line is in the public interest. Like Mr. Mitchell, Mr. Ketter did not determine much more than that the Callaway-

Franks solution was an available engineering option which would work adequately from an electrical engineering standpoint. Mr. Ketter did not perform any independent analysis to verify his agreement with Mitchell's results. However, Mr. Ketter like the witnesses of Ameren UE has totally and consciously disregarded any adverse impact from the proposed "electrical solution." He has not visited the area nor has he attempted to locate precisely where the line will go. He has conducted no social impact analysis and, indeed, appears to be of the opinion that such adverse economic, social and societal impacts in this affected Missouri community play no role or part in determination of Staff's position. This is, again, identical to Ameren UE's position: Only if every single member of the public in Missouri is demonstrably injured by the proposed line would these engineers even consider the possibility that the line might not be in the public interest. The Staff is entitled to its crabbed, cold-blooded opinion in this regard. This Commission is entitled to categorically reject it.

Second, Mr. Ketter has disqualified himself as any kind of unbiased witness providing independent expert testimony to this Commission on any aspect of the proposed line. Mr. Ketter is a rather "pro-utility" Staff member on this issue. As an engineer, this is understandable but it affects his credibility. More importantly, his own description of his underlying principles of evaluation of these issues indicates he likely has no opinion whatsoever on the actual question before this Commission of whether this line is in the public interest. Mr. Ketter is entirely focused on electric utility rates. He believes they should be as low as possible. Therefore, the issue of whether a transmission line anywhere in the state is in the public interest is a simple matter of mathematics: Whatever the least expensive solution is will be in the public interest because the cost will go into rates and rates should be low regardless of any collateral damage to non-economic imperatives. (Tr. 434-435.) To the extent "public interest" involves more than the cheapest and fastest solutions for

the lowest possible rates, Mr. Ketter's views and opinions offer the Commission no assistance with the question. Mr. Ketter's analysis includes no consideration of any economic (other than for the utility) philosophical, aesthetic or societal concerns of the Callaway-Franks line and its adverse impact on Missouri citizens.

Moreover, Mr. Ketter appears to also believe that his position on the Staff should be used to promote his personal economic interests rather than the interests of the public. Mr. Ketter explained, as part of his view that low rates equals public interest, that he is himself a member of an electric cooperative and receives electrical service from one of AECI's subsidiaries. (Tr. 577.) Mr. Ketter does not want to pay more for electricity nor does he believe anyone else does. (Tr. 578.) Mr. Ketter subscribes to the view that enhancements to the integrated grid system will result in additional expense being eventually passed on through rates to himself as well as others. Such personal economic concerns of Mr. Ketter are perfectly rational, but are also quite irrelevant to a government employee charged with protecting the public interest. Mr. Ketter's desire that his personal electric bill be as low as possible appears to be the sole basis for Staff's opinion that this Commission should approve Ameren's Application. That personal opinion is no basis at all, and Staff's recommendation means nothing.

As previously stated, and as a matter of law, Applicant bears the burden of proof by a preponderance of the evidence that its proposed Callaway-Franks high voltage transmission line through three Central Missouri counties, in which it does not serve customers, is a proposal which serves the public interest. As a matter of proof and evidence, Ameren has failed to carry its burden. Given the lack of analysis, or even passing consideration, given to the public interest in developing its plan and its Application, Ameren UE's Application should be denied on the basis that the record

of evidence does not support the granting of a Certificate of Convenience and Necessity.

VI.

APPLICANT HAS FAILED TO REBUT THE SUBSTANTIAL EVIDENCE THAT ITS PROPOSED CALLAWAY-FRANKS POWER LINE IS ACTUALLY INJURIOUS TO THE PUBLIC INTEREST

It is important to note that Intervenors have no burden of proof in this proceeding. It is not incumbent upon Intervenors to demonstrate that the Callaway-Franks line is not in the public interest, nor does Intervenor need to itself come forward with a preponderance of evidence that the line is contrary to the public interest. However, the evidentiary record demonstrates undisputed injury to the public interest through actual injury to members of the public. For the most part, Applicant has chosen to simply ignore Intervenors' evidence of injury, leaving such evidence uncontradicted, unimpeached and, therefore, as a matter of law "substantial." On those few matters concerning which Applicant has chosen to respond to Intervenors, Applicant's evidence is entirely insufficient. In general, Ameren's response regarding harm to the public from its proposed line is simple: "Trust me." Ameren attempts to brush aside all concerns with their assurance that no injury to the public or the public interest will occur. However, based upon Ameren's demonstrated history of untrustworthiness, and its duplicity in this very Application proceeding, its suggestion that it may be trusted to protect the public interest is ludicrous and should be rejected.

Testimony is uniform and undisputed that Ameren UE has not and will not specify the actual route and location of the proposed line. (Testimony of McDaniel, Exhibit 37, page 2, lines 4-6.)[1]

[1] This Brief will not specifically reference the testimony of the nearly 40 witnesses confirming this and similar facts. However, a review of the testimony pre-filed by Intervenors and the testimony of the witnesses at trial confirm that the evidence supports the allegations referenced herein. Pursuant to Section 536.080.2, all Commissioners are requested to personally consider the Pre-Filed Rebuttal Testimony of Intervenors, Exhibits 13-50.

Ameren will not tell any of the property owners upon which it holds by assignment blanket easements where the line actually will go, and indeed it appears the line occasionally moves in various directions. (Testimony of Mary Claire Kramer, Exhibit 34, page 2, lines 5-14; Tr. 460-463.) Indeed, Ameren UE will not even tell this Commission where the line will actually be located on these properties where these blanket easements are held. (Tr. 293-296, 318, 324-325, 326.) Ameren wishes to maintain its "flexibility" to put the line where it works best for Ameren, and suggests that the Commission can "trust them" to do the right thing to accommodate land owners if approval for the line is issued without anyone knowing where it will be located. (Tr. 230-231.) In response to this most fundamental concern of property owning members of the public whose interests are directly impacted by where the line will be located, Applicant repeatedly says "trust me." This is not evidence, and it is not very encouraging to the public. (Tr. 228-229.)

Similarly, Ameren does not own all of the easements necessary to complete its line. Significantly, it must acquire an additional approximately 11-12 miles of easement right of way by either negotiation or condemnation. (Testimony of Mitchell, Schedule 4, page 60; Tr. 84-87.) Owners in this new and currently unburdened area do not wish to sell their land to Ameren UE. Yet, Ameren has at all times assured these members of the public that their land will in fact be acquired. (Testimony of Jill Drennon, Exhibit 25, page 2, lines 7-17; Tr. 472.) Mr. Douglass assures this Commission that it can "trust us at Ameren UE" to do everything to negotiate a good price, and that they are disinclined to use the power of eminent domain. (Tr. 316-319.) Tellingly, however, as of the date of hearing (and as of the date of the filing of this Brief) no offers of any kind have been made or negotiated for easements in this 11-12 mile area. And why would Ameren make any such good faith offers or commence such negotiations? Once the PSC grants them approval to build the

line, all unwilling sellers have the sword of condemnation hanging over them in the negotiations, which is not the case presently. All that Ameren can be trusted to do is to negotiate the lowest and best price for Ameren to obtain easements and then seek condemnation for any reluctant sellers. The public welfare cannot be so lightly disregarded as to simply trust that Ameren UE will not abuse its power and authority once a Certificate of Convenience and Necessity is granted.

Similarly, Ameren is intentionally vague and evasive even on their policy regarding just compensation. While Mr. Douglass assures the Commission that "Ameren can be trusted" to treat land owners fairly, the testimony of Ameren's expert appraiser Mr. Nunn paints quite a different picture. Mr. Nunn will be the appraiser for Ameren in negotiating offers. (Tr. 304-305.) The value which Ameren is willing to pay for easements is not "fair value" but is "fair market value," as that term is understood by appraisers. Appraisers fix the price based upon sales of comparable land in the community. However, most of the land in this approximately 11-12 mile section is held in family farms and "comparables" are difficult to come by. Properties do not sell with regularity (Tr. 473), and when they do it is often within family relationships where the price might or might not reflect fair value. (Tr. 486.) The price at which Ameren can acquire the property is therefore likely to be the lowest value; that is, the price that a willing seller (perhaps even anxious) sells to a buyer, who may or may not be paying fair value based upon family relationships. However, the significant element which makes such valuation entirely unfair, as well as contrary to the public interest considerations which guide this Commission, is the absence of the "willing seller" in Ameren's acquisition. "Willing sellers" must price their land competitively with land otherwise available for sale. Indeed, often the "willing seller" is an"anxious or distressed seller," who may be pressed to sell at a price less favorable to the seller by circumstances frequently encountered by farmers and

small businesses, such as bad business conditions and credit availability. Ameren's appropriation of property from owners in this 11-12 mile corridor does not include a willing seller, nor a distressed or anxious seller, but in fact imposes a sale on an "unwilling seller." The power of eminent domain allows Ameren an advantage no one else in the market place enjoys. It may seize property involuntarily from its owner at a price determined by what a hypothetical willing and anxious owner would sell it for. There is no possibility that "just compensation" will be paid by Ameren UE for easements, and their representations to the contrary cannot be taken on trust.

The simple fact is that as a for-profit corporation Ameren cannot and should not be trusted to seek any but its own interests in its dealings with these unwilling land owners and members of the public. (Tr. 334.) While the transaction may be constitutional, there is no correlation between mere legality of an appropriation of private property and what is in the public interest. A proper understanding of this consequence of a PSC grant to Ameren of a Certificate of Convenience and Necessity to construct this power line requires, at bare minimum, that Ameren show pressing need for this particular proposed line and the lack of any viable alternative or option.

The difficulty created by strong opposition to the proposed Callaway-Franks line and by likely need for extensive condemnation of properties in 11-12 miles of the corridor makes even more curious the continued refusal of Ameren to even consider what was once its front running option for solution: Construction of an additional Bland-Franks line running next to and parallel to the existing 345 kV Bland-Franks line. Testimony indicates that compared to the Bland-Franks option, Callaway-Franks is not the best and least intrusive alternative for correcting problems on the Bland-Franks line. (Testimony of Doug McDaniel, page 8, lines 2-22, page 9, lines 1-2, page 19, lines 5-22; page 20, lines 1-12.) Because Ameren refuses to even visit or look at the Bland-Franks corridor,

Intervenors' testimony that easement is available and far fewer structures would be impacted by a new Bland-Franks line stands undisputed. (*Id.* and Tr. 481-484.) Indeed, while the proposed Callaway-Franks line will require removal or impairment of use on approximately 24 structures, (including at least one residence) only 10 structures would be at all affected by a new Bland-Franks line; and if the line were crossed at some point (as Applicant agrees it can be) it is likely no structures would be adversely affected whatsoever. (Testimony of McDaniel, page 7, lines 13-22; page 8, lines 1-22, and page 9, lines 1-2; Tr. 481-484.) Importantly, no residences would have to be removed if a Bland-Franks line were constructed. (*Id.*)[2] Ameren's proposed Callaway-Franks power line cannot possibly be approved as in the "public interest" over the obviously superior option of simply adding a new parallel Bland-Franks line.

Balancing the various other factors and interests in the evidence makes the impropriety of the Callaway-Franks line even more apparent. Construction of a Callaway-Franks line, in addition to requiring condemnation of substantial new easement, would require a total of 55 miles of lines to be constructed. If, as Ameren UE insists, correction of loading problems is the intent of the

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[2] It is the declared public policy of the state that appropriation of right of way by use of eminent domain by public utilities not be allowed to interfere with productive use and ownership of property, such as that at issue here. Section 393.090, RSMo provides:

> No corporation, company or individual shall be authorized to enter or appropriate any dwelling, barn, store, warehouse or similar building erected for any agricultural, commercial or manufacturing purposes.

This section is located in the statutory provisions dealing with "electrical corporations" such as Ameren UE, and similar provisions apply to telephone and telegram companies. See Section 523.080, RSMo. Ameren's Application and proposal before this Commission demonstrates a clear intent to violate this statute by appropriating residences, barns and other agricultural structures, as well as impairing use of similar buildings erected for commercial purposes, in order to construct the Callaway-Franks line. Ameren's request for approval by this Commission for its violations of the public policy in these statutes should be rejected.

Application (Tr. 73), far less of a line, in terms of mileage, would have to be constructed in order to rectify the problems between Bland and Franks. Although easement may have to be obtained along the Bland-Franks line, this appears to be substantially offset by the fact that approximately 11-12 miles of land remains to be acquired in order to do the Callaway-Franks line. Although Applicant touts the ability to share 25 feet of existing easement in the Callaway-Franks corridor to create "less impact" of land acquired, this "sharing" is equally available along the Bland-Franks line. Indeed, there may be more easement sharing available along this larger Bland-Franks corridor. (Tr. 497-498.) Further, the overloading problem which is purported to be in need of solution is located at the Bland-Franks line, which is alleged to be of less capacity than required. While the "reliability" concerns for the "grid" from this capacity problem might be remotely and indirectly shared by Intervenors in the path of the new Callaway-Franks line, the testimony of Mr. Mitchell clearly indicates that those property owners currently in the path of the Bland-Franks line have a much greater danger and commensurately greater interest in a solution. The properties along the Bland-Franks line corridor actually benefit directly from the solution. Simple logic and fairness would suggest first looking for a solution in that area before burdening Intervenors who do not have the problem and will not benefit from the solution. All of the problems on the Bland-Franks line described by Mr. Mitchell pertain specifically to the location of the problem along the Bland-Franks line. Only a complete outage by failure of the Bland-Franks line (which has not and is not predicted to occur) could cause any possible impact in the Callaway-Franks corridor, creating legitimate questions as to why Intervenors must bear the burden of the solution to that problem. Solving the problem with a solution at the site of the problem appears so sensible and balanced that Ameren's sincerity and honesty must seriously be questioned because Ameren UE has entirely ignored it.

The evidence of record indicates that a new Bland-Franks line, as a solution to the reliability concerns on the existing Bland-Franks line, is not only a feasible solution but quite likely a better solution than Applicant's proposal. Applicant, however, has not studied this solution at all and has nothing to support its suggestion that it is in any way an unavailable or inferior option to fix the problem. No evidence rebuts the assertion of the adequacy of a new Bland-Franks line solution. In response to questioning by the Commission, Ameren has stated that it does not know how many miles of right of way and construction would be required for a new Bland-Franks line (although they agree it will be shorter than the 55 miles of construction and right of way for the proposed line); they do not know that a "sharing of right of way" (touted as perhaps the sole advantage of the Callaway-Franks proposal) is not equally (and perhaps more greatly) available on the Bland-Franks line; they have no idea what the cost might be for an additional Bland-Franks line (although it could possibly be less to rate payers when the expense and delays occasioned by opposition of the public in the Callaway-Franks corridor is considered); and, of course, that they have no idea whether any adverse societal environmental or aesthetic affects would be shifted onto other unwilling property owners. (Tr. 62, 63, 64-65, 115, 262, 265-266, 270, 282.) Ameren UE has not studied the impact of these considerations at all.

On all of the foregoing issues raised by Intervenors, and on numerous others such as maintenance and site clearing issues, increased activity from two different electric power companies maintaining side-by-side power lines, windrowing of cleared brush and timber and other objectionable aspects of the proposed line, Ameren's only and final response is "trust me." Trust Ameren UE? Trust a company that was just this summer ordered to refund over $400 million in overcharges to rate payers? Trust a company that has killed thousands of fish costing millions of

dollars at the Lake of the Ozarks and instead of apologizing and making restitution has sued the State Conservation Department in federal court to escape liability? It is far too late in this Commission's experiences with Ameren UE to accept "on trust" their expressions of good intentions, accommodation and fair treatment of citizens. On the record, Ameren has failed to rebut the substantial evidence and inferences raised by Intervenor that the proposed Callaway-Franks line and Ameren's Application are not in the public interest, and such Application should be therefore denied.

Further, on the few issues Ameren has chosen to respond to, such responses are entirely insufficient to overcome Intervenors' evidence of harm. For instance, through its expert witness Mr. Nunn, Ameren seeks to establish the curious proposition that high voltage power lines have no effect on property values of the property they cross. The assertion is more than counter-intuitive; all of Intervenors' witnesses have testified to the prevalence of the perception that power lines are undesirable to purchasers and owners of land. (Rebuttal Testimony of McDaniel, Exhibit 37, page 2, lines 19-22, page 3, lines 1-9; Tr. 484-486.) Mr. Robert Wilbers, a Realtor with 31 years experience in Central Missouri, testified at the April 22 public hearing in Linn that such power lines without question do depress property values. (Record of Public Hearing, page 62-71.) Ameren makes no attempt to dispute the perception of declining values noted by the witnesses. The evidence purportedly to the contrary offered by Mr. Nunn misses the mark. He relies upon a study of property values of land sold in Camden County many years ago. Such study was not scientific and was not broad enough to constitute any probative evidence of the proposition it is alleged to support. (Tr. 403-404, 405.) None of the properties Mr. Nunn evaluated had 345,000 volt power lines on them. (Tr. 405-406.) None of the properties had 345,000 volt lines running immediately next to 161,000 volt lines of a different utility. (Tr. 407.) None of the evaluations were of properties that were

burdened with a total of 506,000 volts of electricity. (Tr. 408.) No apparent attention was even given to the location of the lines on the properties (i.e., was the line near a structure). (Tr. 407.) Moreover, the study relied upon by Mr. Nunn in his testimony was neither produced nor offered for review by the Commission as support for Mr. Nunn's interesting conclusions because it is not even written. (Tr. 402.) As support for a rebuttal of Intervenors' evidence that presence of high voltage power lines adversely impacts property values of the land burdened, Mr. Nunn's testimony is valueless and should be disregarded as mere conjecture.

Similarly misdirected is the testimony offered by Applicant on the issue of adverse health effects of electromagnetic fields (EMF) generated by high voltage power lines. Dr. Gajda offered his categorical opinion that EMF generated by high voltage lines has no effect at all on living organisms. However, Dr. Gajda's testimony was over the objection of Intervenors that his opinion on health effects lacks sufficient foundation because he is not a health official or medical or health care practitioner. Dr. Gajda is an engineer. Intervenor suspects his opinion is shared by the other engineers, like Mr. Mitchell and Mr. Deweese. However, the magnitude of effect of EMF on health is not a matter of engineering opinion; it is, to the extent it is relevant, an issue of expert medical testimony. While the PSC is entitled to admit the testimony of Dr. Gajda "for what it is worth" (Tr. 383), Intervenors respectfully suggest that Dr. Gajda's testimony on possible links between EMF from high voltage power lines and the health of human beings and other living organisms is worth nothing.

Moreover, Dr. Gajda's testimony misses the point. Dr. Gajda "believes" EMF has no adverse health effects. (Tr. 385.) Some Intervenors "believe" there are adverse health effects from EMF (Tr. 465), and others are not sure. The scientific health care community appear to be more undecided

than Dr. Gajda, but the fact remains for purposes of the issues in this case that the vast majority of the public (including all Intervenors) are concerned about the possible adverse health effects of EMF and that this must certainly effect property values. Dr. Gajda is not a social scientist and has no evidence to offer about how widespread the public perception of adverse health effects from EMF are. Therefore, once again, the evidence offered by Intervenors that such perception exists and that such perception will adversely impact the property values of Intervenors who bear the burden of the proposed high voltage line is undisputed. Once again, Ameren refuses to even consider an approach that will do less damage to fewer people by adding capacity to the Bland-Franks line, rather than destroying values in an entirely new and separate area that has not already experienced what damage is done by the existence of such high voltage lines. (See Rebuttal Testimony of McDaniel, Exhibit 37, page 8, lines 2-22, page 9, lines 1 and 2.)

VII.

REQUEST FOR CONSIDERATION OF RECORD

Pursuant to Section 536.080.2, RSMo, all Commissioners are respectfully requested to review and personally consider the following portions of the record:

Cross Examination of Charles Mitchell, Vol. 3, Tr. 62-96; Vol. 4, Tr. 97-129; and Vol. 3, Tr. 130-139 and 143-211. Cross Examination of David Deweese, Vol. 3, Tr. 223-253. Cross Examination of Geoffrey Douglass, Vol. 3, Tr. 257-282; and Vol. 5, Tr. 291-343, 494-507 and 516-525. Cross Examination of James Ketter, Vol. 5, Tr. 438-455; Tr. 558-573. Rebuttal Pre-Filed Testimony of Mary Claire Kramer (Exhibit 34), Jill Drennon (Exhibit 25), and Doug McDaniel (Exhibit 37); and Cross Examination of Jill Drennon, Vol. 5, Tr. 471-476, and Doug McDaniel, Vol. 5, Tr. 481-490.

CONCLUSION

For the foregoing reasons, Intervenors respectfully request that the Missouri Public Service Commission find on the record of evidence that the Application of Union Electric Company for Permission and Authority to Construct a 345 Kilovolt Transmission Line in Maries, Osage and Pulaski Counties, Missouri, be denied.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: James B. Deutsch

James B. Deutsch, #27093
308 East High Street
Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing document were sent U.S. Mail, postage prepaid, to the following parties of record on this 14th day of November, 2002:

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Joseph H. Raybuck, Esq.
Union Electric Company,
d/b/a Ameren UE
P.O. Box 66149
St. Louis, MO 63166-6149

Mr. James B. Lowery
Law Offices of Smith Lewis, LLP
P.O. Box 918
Columbia, MO 65205-0918

James B. Deutsch

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