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

REPLY BRIEF OF INTERVENORS CONCERNED CITIZENS OF FAMILY FARMS AND HERITAGE

A.

REPLY TO INITIAL BRIEF OF STAFF

On page 5 of its Brief, Staff repeats an unfounded and unsupported statement often heard during testimony in this case.

> A separate route would impact a different group of property owners, but a wider footprint of 150 feet would be required and negotiating a new easement would cause considerable delay in the project. (Ketter Rebuttal, Ex. 12, Appendix A-2 through A-3.)

As noted in the Brief of Intervenors, there is no evidentiary foundation for any of these statements. Neither Applicant nor Mr. Ketter have any idea who this "different group of property owners" are, whether they are opposed to correcting problems affecting them on the Bland-Franks line, or whether there is greater or less impact on the interests of the public if the corrective action were taken in the Bland-Franks corridor, rather than as proposed by Applicant. Additionally, the statement that a "wider footprint" would be required is not only unsupported by evidence, but is contrary to the evidence, which supports the conclusion that no greater amount of land would be taken in a line built parallel to the troubled Bland-Franks line - - indeed, it is likely less land for

easement might actually have to be obtained, as easement sharing is equally or more greatly available on the Bland-Franks line. Finally, Staff's statement that "negotiating a new easement would cause considerable delay in the project" would appear to be ludicrous under the present evidence and circumstances. Neither Staff nor Applicant even know how much difficulty might be encountered in procuring easements parallel to the existing Bland-Franks line because they have not inquired about it, nor apparently even thought about it. Staff and Applicant simply do not know whether negotiating a new easement would cause delay. However, it is abundantly clear from the history and evidence of this case that forcing construction of an entirely new Callaway-Franks line, which is approximately double the length required for an alternative new Bland-Franks line, and through communities which vigorously object to it has already caused "considerable" delay and will continue to cause delay in the project. Intervenors have only just begun to fight this proposal, and speed in completion of a new Callaway-Franks line is unlikely in any event. In summary, Staff's Recommendation based upon the rationale set forth in its Brief at page 5 is no rationale at all, because there is no evidence of record to support it and the evidence of record contradicts the rationale stated.

Also at page 5 Staff suggests that "mid-Missouri customers would benefit from this [Callaway-Franks line] project." Staff references the proposed new substation near Linn, Missouri and claims it will provide UE additional transmission capacity to serve its customers and an additional inter-connection point for AECI to serve its customers. First, the benefit to "mid-Missouri customers" is both illusory and irrelevant. UE has no customers in the Linn, Missouri area. There is absolutely no support in the record for any suggestion that any UE customers will be directly served and thereby benefitted by the construction of the Callaway-Franks line. Further, benefits to

and enhancements for AECI and its customers are not a matter of interest or jurisdiction of this Commission. AECI and its customers are not subject to this Commission's regulation. To argue that this Commission should grant a Certificate of Convenience and Necessity to UE so as to provide benefits to AECI or its customers is nonsense. This Commission has no authority to serve such unregulated interests and Staff's endorsement on this basis is without merit.

Moreover, nothing in the rationale for the Staff's Recommendation in this case justifies building the Callaway-Franks line over the alternative of a new Bland-Franks line. The only rationale stated by Staff in support of the Callaway-Franks line is a rationale that would be equally well served and promoted by a new Bland-Franks line: The reliability problem is on the existing Bland-Franks line. There is no reliability problem in the Callaway-Franks corridor. UE has no customers in the Callaway-Franks corridor. The only apparent rationale for the Callaway-Franks line is the economic opportunity offered Ameren UE to build further and additional lines west to the Jefferson City/Lake of the Ozarks area from its new Linn, Missouri substation. If this is such a necessary and worthwhile proposal, Ameren should propose it separately on its own merits for review. It should not be allowed to cloak an unneeded Linn substation with the mantle of "reliability enhancements" for the Bland-Franks line.

At pages 5-7 of its Brief, Staff more or less correctly details the public outrage shown at workshops and public hearings on this proposed line. Staff correctly notes that the "blanket easements" obtained over 20 years ago in only part of the proposed Callaway-Franks corridor make specific location of the line impossible. Further, different and perhaps preferential treatment of some easement holders by AECI in the intervening period makes predicting the path of construction through the Callaway-Franks corridor even more problematic. Some few of the "blanket easements"

were converted to a "specific location" during the past 20 years, which limits any flexibility UE suggests that it has in locating this line to satisfy current owners. Staff acknowledges the public's vigorously expressed desire not to have the additional transmission line as proposed, the public's concern with its proximity to existing homes and structures, and the public's concerns about the future continuing commercial activity on the easement by crews of two different electric utilities. Staff, however, does not care about these concerns; it is simply "too bad" for Missouri citizens that UE's welfare requires such sacrifice. Staff also appears to recognize the concerns of property owners to the clearance and maintenance policies of UE, but chooses to simply "trust UE" to fulfill promises which the evidence and past experience shows to have been previously broken. Staff also acknowledges the near certainty of condemnation by UE and the taking of property from Missouri citizens, but dismisses the violence done to the public and the public interest thereby as being "a problem for the civil courts." The issue of condemnation is, however, an issue for this Commission in the first instance here where a determination of whether this proposal serves the public interest of Missourians is at stake. Because UE will unavoidably use (and likely abuse) the power of eminent domain to condemn substantial amounts of property in an 11 to 12 mile area of Central Missouri, it cannot even be argued that such action is in the public interest unless it is strongly justified and shown to be unavoidable. Applicant makes no effort at such a showing.

At page 11 of its Initial Brief, Staff states the opinion that the "proposed 345 kV line is necessary for reasons of public convenience and necessity." It is significant that this opinion depends entirely upon issues of reliability of the Bland-Franks line, and to alleviate overloading conditions on that line. It is clear that Staff's opinion is actually no more than a statement that the proposed Callaway-Franks line is a possible solution to the Bland-Franks line reliability problems.

However, on the record as a whole it is clear that the Staff is not of the opinion that the Callaway-Franks line is the only solution to such problem; Staff, like Applicant, has simply not studied the alternative solution of a new 345 kV line running parallel to the existing Bland-Franks line.

Next, on the issue of jurisdiction the Staff attempts to make sense out of contradictory directives to this Commission by the legislature and the courts. As Staff notes (Initial Brief of Staff, page 7-8), the statutes of Missouri clearly and categorically require that this Commission review any and all new construction of any "electric plant," which includes this proposed Callaway-Franks and other transmission lines. On the other hand, a single Court of Appeals decision, *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177 (Mo. App. W.D. 1960), appears to declare this clear legislative directive to be at least partially meaningless. On the basis of the *Harline* case, this Commission has in the past concluded on occasion that an electric utility is not required by law to seek Commission approval for construction within its "certified area." Regardless of the validity of these past decisions and the *Harline* case, however, they have no application in this instance.

First, it is respectfully suggested that the *Harline* case contains absolutely no rationale or analysis for why such clear legislative direction as that found in Sections 393.170 and 386.020 should be ignored. Clearly, Ameren UE is "an electric corporation" seeking to construct "new transmission lines" which are defined by law to be included as part of Ameren UE's "electric plant" for purposes of prior approval and permission of the Commission as to whether such construction serves the public interest. A review of the *Harline* case indicates no intent by the Court that this legislative language should be deemed utterly meaningless, and *Harline* would appear to be confined to the particular facts in that case. Unlike Ameren UE, the transmission line in the *Harline* case

appears to have been directly used for the purpose of providing service to the utilities own customers in an area it was certificated to provide service in. It clearly did not involve the kind of interstate transmission lines proposed here. Moreover, *Harline* did not deal with a transmission line partially within and partially without the certificated area of the utility. Perhaps if the *Harline* case had dealt with facts more similar to this case, the Court might have come to the realization that in the modern inter-connected grid system all transmission lines are theoretically for a certificated area, leading to the absurd result that nothing described in the statute is even subject to review under Section 393.170, RSMo. What the *Harline* court was actually saying is that the specific transmission line at issue in that case had been itself approved at an earlier time and that utility did not need for it to be certificated again. That is not the case here, where Ameren UE will be constructing 54 miles of new high voltage transmission line where it has maintained no lines whatsoever in the past and where it serves no customers.

Finally, Intervenors agree with Staff's presentation of the issues at page 9-11 concerning PSC review of the value of the easements (no one asks the PSC to value any easements) and FERC authority over the issues in this case. There is no authority to guide this Commission except the law of the State of Missouri. The FERC has no role in determining whether this proposed new line serves the public interest of the State of Missouri. Further, the question as to easements has nothing to do with determining value, but instead is within this Commission's jurisdiction to consider the magnitude and impact of its approval on the public interest. Intervenors do not request the Commission to value easements, but request the Commission to determine that the taking of easements from unwilling land owners in Central Missouri, as any but a last resort for lack of other alternatives, does not serve any public interest of the State of Missouri.

B.

RESPONSE TO POST HEARING BRIEF OF UNION ELECTRIC COMPANY

At page 2 of its Brief, UE summarizes the issues upon which it agrees it must carry its burden of proof. Intervenors do not dispute that "UE's Bland-Franks line is overloaded and that problem must be solved," but there is no evidence which establishes the problem to be so critical or monumental as to justify any solution proposed by UE, no matter how damaging to the public and the public interest. Indeed, on the evidence, the problem is merely one of "relative reliability," and the solution one merely of "enhancement of reliability." UE does not suggest that the line has in the past or is about to fail; nor does UE state any "drop dead date" by which such reliability enhancements must be made to prevent failure. At most, the evidence establishes that the Bland-Franks line may be overloading to some extent, and that such reliability problem should be solved. Thus properly characterized, Intervenors find no real disagreement with the assertion.

Next, however, UE states that "UE cannot make the overloads go away, regardless of why the overloads exist, unless new 345 kV transmission is built [sic]." While the evidence is unclear as to whether UE can "make the overloads go away" (UE's limited analysis shows no effort in this regard) Intervenors agree that the cause of the overloads, whatever they are, is irrelevant to the reliability problems which may exist on the Bland-Franks line under the evidence. Intervenors reject, however, the Applicant's assertion that we have no choice but to "trust UE" that the solution to their overload problem is a new 345 kV transmission line, and Intervenors strongly reject UE's assertion that "the Callaway-Franks line does the best job of solving that problem." In reality, there is no evidence that the Callaway-Franks line does the "best job" of solving the Bland-Franks reliability problem. Rather, the evidence merely shows that Callaway-Franks is one of several acceptable

"electrical solutions" - - which also happens to cause, however, the greatest injury to the public and the public interest from among the available alternatives.

UE graciously sets a low hurdle for itself by suggesting that the Callaway-Franks line merely need be a "valid electrical and engineering" solution, and that UE's choice of route merely needs to be "lawful, reasonable and sound" in order to gain approval of the PSC. There is no authority justifying such a transparently meaningless standard of proof: UE bears the burden of proving that the proposed Callaway-Franks line is the "best" solution from among all available solutions, by showing its analysis of all the solutions. As stated in Intervenors' Initial Brief, Ameren UE has not studied any solution except the Callaway-Franks line and cannot establish that such line is the "best of all available solutions" because of such lack of study. Applicant simply does not know whether the Callaway-Franks line is "best" or not in terms of the public interest of the State of Missouri because Applicant has made no attempt to study and compare all available solutions.

UE also seeks to bolster its selection of the Callaway-Franks line by urging this Commission to consider concerns solely related to electric cooperatives and their customers. Because this Commission lacks any jurisdiction in this or any other case to regulate the activities of Missouri's electric cooperatives, the issue of any benefits (or burdens) to AECI and its subsidiaries, or to their customers, is irrelevant, immaterial and must be excluded. Similar to the interest of Ameren UE in promoting its financial fortunes in Central Missouri by construction of a new Linn power substation, purported benefits to electric cooperatives and their customers are not factors in considering the public interest of Missouri in the proposal in the current Application.

Applicant's own summary of what facts must be established by evidence (Applicant's Brief, page 2), when viewed under the actual record of evidence, demonstrates that Applicant has failed

to carry its burden of proving that the proposed Callaway-Franks 345 kV electric transmission line serves the public interest, because (A) it is far beyond the scope of what is needed to correct the problems of reliability alleged to exist elsewhere; (B) it is not the best solution to the problem alleged to exist because a Bland-Franks line solves the problem without harm; and (C) it cannot be said to be the "best" alternative among those available in any event, because UE has not studied other available options, such as a new parallel Bland-Franks 345 kV line. Because UE does not even attempt to deny the severe harm and injury to the public in the Callaway-Franks corridor, and because the "benefits" of the Callaway-Franks solution either inure to businesses and persons of no regulatory interest to this Commission (electric cooperatives) or is strictly tangential in providing enhanced reliability to the whole grid, (rather than Intervenors or any Missourian) the Application has not been shown to be in the public interest.

The Applicant's "Statement of Facts" beginning at page 2 sets forth the testimony of its witnesses in Pre-Filed Testimony. As demonstrated in the Transcript of Proceedings during cross-examination, however, most of these so-called "facts" are simply hypothetical and projected possibilities. For instance, although making such statements in support of the proposal as that "such overloadings [on the Bland-Franks line] negatively affect customers and, if not relieved, will create safety concerns...," it is clear no negative affect has ever yet been experienced by any customer and that under the evidence no safety concern (such as sagging lines reducing ground clearances) has yet arisen. Further, there is no evidence that establishes the characterization set forth in the first sentence on page 3 that the loading on the Bland-Franks line is "heavy." Indeed, under the evidence and testimony the loading could only be characterized as "uneven." Applicant does, however, admit that the problem is solely, exclusively and entirely located on the Bland-Franks line rather than anywhere

else. (UE Brief, page 3.)

On page 4-5, Applicant details the steps it took in arriving at the Callaway-Franks solution, and admits (page 5) that until "free easements" from AECI were discovered, the "best" solution appeared to be one of two other options, including a new Bland-Franks 345 kV line but not including the Callaway-Franks line. Under Ameren UE's own statement of the facts, as soon as AECI said "free easements," any comparative study of "best solutions" ended. The economic considerations superceded all other considerations after that point. No evidence, no document, shows that any further comparative analysis of which line, Callaway-Franks or Bland-Franks, best served the overall public interest was ever attempted; indeed, the testimony indicates that such analysis was studiously avoided. Applicant did not wish to have public interest considerations interfere with the financially superior solution it had already chosen solely on the basis of cost and economic benefit to Ameren UE.

UE asserts at page 5 a characterization that this Commission cannot take seriously: "Because the easements were available, UE and AECI decided to study a possible Callaway-Franks line and concluded that the Callaway-Franks line (together with a new Rush Island-St. Francois line) relieved the overloading problems the most, and was the best electrical solution to the problem." Review of the transcript and testimony references in footnote 23 of Applicant's Brief asserting support for this statement shows that this is not an accurate characterization. No evidence establishes that any study was done comparing the Callaway-Franks line to any other option; nor does any testimony state that the Callaway-Franks line relieved overloading problems "the most." While Mr. Mitchell suggested that Callaway-Franks was "the best electrical solution to the problem" and that it was "superior," there is no shred of evidence in his report examining or determining these questions. Nowhere does

Mitchell quantify how much "the most" overloading is - - or how much overloading this solution avoids. We have only Mr. Mitchell's assertion that the "best electrical solution" was proposed, and that the Callaway-Franks line is "superior." There is no expert analysis showing support for Applicant's assertion of those facts. As "expert opinion," this testimony lacks foundation. Mr. Mitchell's clear bias in favor of his employer on its own must disqualify his opinions, which are also the sole evidence supporting these assertions. The fact that Mitchell's "Joint Study Report" contains no discussion of an analysis of "best solutions" or the "superiority" of Callaway-Franks line belies his more current contentions in testimony. Accepting the statement of Applicant in its Brief (page 5) that the comparison of Callaway-Franks with other options indicated only "similar" electrical performance and properties (indicating that Callaway-Franks was not "the best" but simply an "available" solution) there is no basis upon which to conclude from the evidence that Callaway-Franks was "superior" based solely upon it being "shorter." (UE Brief, page 5-6.) To the contrary, whatever the distance between Bland and Franks may be, it is clearly much shorter than the 54 miles of new construction proposed by Applicant. Further, any purported "superior performance" of one line or another is again simply a matter of pure unsupported conjecture by Mr. Mitchell. No analysis on paper demonstrates that Mr. Mitchell ever even attempted to determine the "superiority" of Callaway-Franks over other solutions - - in any sense other than that Callaway-Franks included some "free easements" and was therefore cheaper. Indeed, Mitchell appears not to have arrived at the Callaway-Franks solution through study, but he was instead instructed that was the solution reached by "management."

Furthermore, all of the reasons offered for why a Callaway-Franks line might be superior in some fashion to other solutions are utterly beside the point. The point is the public interest. A

"superior electrical solution" which would run this line, for instance, directly through the Governor's Mansion, directly through the PSC offices, through two banks and across the center of Jefferson City would never be regarded as "in the public interest" simply because Mr. Mitchell says it is the "best engineering solution." Regardless of what Mr. Mitchell did or did not do, may or may not have done to determine from his office in St. Louis that a straight line between Callaway and Franks was "superior," he did not at any time consider the public interest. On the record, the most that can be said is that if Ameren UE's economic interests happen to equal the public interest, then the Callaway-Franks line may be approved. However, this is not the test of the public interest and, in fact, the utility's economic interest must be disregarded entirely in judging the Application in this case.

Even the "four distinct advantages" referenced on page 6-7 of Applicant's Brief are not supported by the evidence. First, Applicant asserts that Callaway-Franks is 16 miles shorter than a Callaway-Bland to Franks route, and this shortness makes Callaway-Franks the electrically better solution. Notably absent is any study or evidence so stating. Again, we have only Mr. Mitchell's "opinion" in this regard. Moreover, even Mitchell is careful not to overstate or even quantify the advantage of a "shorter" line electrically. Suffice it to say that any small advantage a shorter, straighter line might be is more than offset by the difficulty of placing such a new line through the Callaway-Franks corridor over the vigorous opposition of property owners in the path of that line. That line may not end up being so straight, although we currently do not know because Applicant will not tell us the location of the line.

Further, until "free easements" were waived before Ameren UE, it obviously fully intended to provide a new transmission line at Bland-Franks that would satisfy its duties to provide reliable

service. We note that the existing line from Callaway to Bland already has two 345 kV lines running parallel to each other in close proximity. There can be no question that Ameren intended to compliment that duplicate line between Callaway and Bland with a similar duplicate line from Bland to Franks. To now say this solution is not workable defies credulity. This obviously intended solution clearly satisfies the purported goal of eliminating reliability concerns on the Bland-Franks line. Why, if this solution is so inferior, was Ameren proceeding to use precisely this solution now proposed by Intervenors prior to this time?

Second, Ameren presents a recently contrived reason why a second Bland-Franks line is less desirable: Side-by-side Bland-Franks lines are at greater risk of both lines being simultaneously outaged than a line a few miles away at Callaway-Franks. If Ameren has been so concerned that thunderstorms, tornadoes or ice storms would devastate systems of parallel lines, why did it build such a parallel line from Callaway to Bland? Why are such similar parallel 345 kV lines found throughout Ameren's system? While the rationale is not illogical, it is clear that it has nothing to do with the decision making process here regarding the public interest. It also is not a practice routinely followed by Ameren elsewhere and should be disregarded as a mere product of UE's litigation strategy.

Third, Ameren suggests that having been assigned approximately 80% of the easements necessary for a Callaway-Franks line route, the proposal has the advantage of being put into service more quickly and at reduced costs. That assumption has already been shown to be clearly wrong. The existence of the easements has not translated into a quick project for Ameren. Indeed, it would appear that Ameren is in for a rather long term effort, not only with regard to the as yet unlocated easements it has obtained from AECI, but certainly with regard to the 20% of easements (some 11-12

miles) it must now obtain by condemnation from unwilling property owners. The cost has not been quantified for any other alternative to Callaway-Franks, so Ameren UE cannot possibly suggest that the Callaway-Franks line has the advantage of "lower cost." Ameren simply does not know whether a new Bland-Franks line would cost more, less or the same as the Callaway-Franks line proposal. Ameren's suggestion that fewer land owners would be impacted because of the existing easements, or that fewer new easements will need to be obtained, is also unfounded. The impact on current property owners in the Callaway-Franks corridor is really no different than if Ameren UE did not have the easements at all. None of these property owners knew of or expected to have over one-half million volts of electricity across their property, nor have they prepared for this eventuality. Because Ameren does not know how many land owners would be affected on the Bland-Franks line, does not know (or apparently care) how the Callaway-Franks land owners would be adversely affected, and because UE cannot estimate the expense, delay and difficulty of implementing its Callaway-Franks solution against the continuing opposition of members of the public, this proposed "advantage" of shorter time of construction at lower cost of the Callaway-Franks line over a second Bland-Franks line is illusory.

Fourth, Applicant again insists that this Commission must approve the Application to grant benefits to Associated Electric Cooperative, Inc., an electric cooperative which is not subject to the regulation of this Commission and whose customers are not within the jurisdiction of this Commission. Intervenors reiterate that only the most vague, remote and generalized notion of the "public interest" makes the financial welfare of electric cooperatives and their members a consideration for determination of the public interest at all in this proceeding. Any benefit to these collateral parties and their businesses is also obviously far outweighed by the injury to Missouri

citizens in the path of the Callaway-Franks line. AECI and its customers should be ignored in judging this Application and its merits.

Additionally, it is abundantly apparent from the evidence that AECI and its customers will benefit no matter what solution is chosen by Ameren UE. Although there is no evidence that a Bland-Franks line would have any additional expense, that expense, whatever it may be, would not be born by AECI. Further, regardless of which solution brings an additional 345 kV line to the Franks substation, AECI will have to spend the same amount of money to improve that facility. This happens regardless of the alternative solution selected. AECI suggests that if Ameren does not use its easements to build a Rich Fountain-Franks section, AECI will do so. Fine. Let them. That territory is served by electric cooperatives and the customers of the electric cooperatives will be the ones to bear the burden. It will not be of any consequence to the Public Service Commission, because the Public Service Commission has no authority to decide whether this electric cooperative can or should build such a line. However, unlike Ameren UE which is private-investor owned, AECI is member owned, and AECI's management's thinking may be quite different about the propriety of such a line in the face of the vigorous opposition of its members. In any event, it is none of this Commission's concern how AECI handles its business or treats its members. Likewise, it is of no consequence that the joint plans of AECI and Ameren will serve the collateral economic interests of AECI. The question is whether Ameren UE's proposal best serves the public interest. On its merits, Ameren UE's proposal does not serve the public interest of Missouri.

Similarly, the benign explanation offered for the decision to build the Loose Creek substation (UE Brief, page 7-8) misrepresents the facts. According to UE, the Loose Creek substation is being built only because AECI wants it, and we are advised that UE is "indifferent" to the use of a

Chamois versus Loose Creek location for this substation. Fine. Again, however, AECI's preferences for location of a substation have no role in this proceeding. Therefore, the Commission should, at minimum, disregard and exclude any new Loose Creek substation built solely for the benefit of AECI on the Callaway-Franks line. In fact, Ameren appears to agree that such substation may be omitted because "the Callaway-Franks line, with or without the Loose Creek substation, solves the Bland-Franks overloading problem." (UE Brief, page 8.) Because the expressed purpose of this Application is to solve the Bland-Franks overloading problem, this Commission should grant no Certificate of Convenience and Necessity which includes any permission to construct the new Loose Creek substation.

However, UE's Brief, page 8-9, clearly indicates that its stated purpose for its request to build this power line is merely a cover-story for enhancing its ability to sell electric power in the Jefferson City/Lake of the Ozarks area. Ameren UE admits it intends by this proposal to solve problems (heretofore not disclosed to the public) which are actually in the Jefferson City area rather than at Bland-Franks; therefore, it is actually not overload problems at Bland-Franks but a potential overload of new customers to be made available to Ameren UE that drives the Application in this case. The Loose Creek substation tail clearly wags this dog, and this Commission should feel insulted by this transparent attempt by UE to enhance not its reliability of service but its ability to poach customers in the Jefferson City market from other utilities.

On page 9 of its Brief, UE reiterates the "advantage" of using the current easements in the Callaway-Franks corridor because only 125 feet of new easement will have to be cleared due to sharing of 25 feet of right-of-way with the existing power line. Intervenors would again simply note that this "easement sharing" is obviously equally available on the Bland-Franks line; and because

the Bland-Franks line currently has a width of 150 feet (instead of the 100 feet available on Central Electric Power Cooperative's 161 kV line), it may be possible to "share" even more right-of-way, resulting in even less impact from a new Bland-Franks line.

Finally, UE relies upon the recommendation of approval of the Application by Commission Staff as support for its Application. As detailed previously herein, and in Intervenors' Initial Brief, Staff's Recommendation constitutes nothing but a rubber stamp of the poorly conceived, grossly unanalyzed and unsupported "Joint Study" and evaluation already performed by Ameren. Zero analysis by Ameren of alternatives, of the public interest and of the adverse impacts of the Callaway-Franks line, even multiplied by the endorsement of that same analysis by Staff, still equals zero analysis of the public interest.

On page 10 of its Brief, UE discusses applicable legal standards and cites numerous cases for the same proposition stated in Intervenors' Initial Brief: The Commission's responsibility is to balance the importance and criticality of the proposed Application against the need for it and harm caused by it in order to determine public convenience and necessity. Interestingly, the case examples cited on page 11 of Applicant's Brief note several important objectives of utilities in justifying proposals like this one, none of which are present in this case. (I.e., there are no savings created by the new transmission line; there is no additional backup power created for use during peak loading and emergencies.) Other examples of such justification (i.e., providing a new outlet for power generated for use by Missouri rate payers; the strengthening of the transmission grid) are noted by Applicant but clearly are matters of degree to be balanced against the cost and the public injury potential of those objectives. Importantly, it does not appear that any of the factors cited include the kind of the nearly universal opposition by the public to the proposal, such as in this case. On

balance, Applicant's proposed Callaway-Franks 345 kV line does more real harm than good, is not the only or best alternative available, and does not meet the test of a project which serves the public interest of Missouri and Missourians.

Applicant's arguments beginning on page 12 of its Brief fall short of the kind of analysis necessary to determine the public interest in this case. First, UE's legal obligations do not require safe and adequate service "at any price." As demonstrated by UE's heretofore cavalier attitude toward problems on the Bland-Franks line, "safety" is a relative concept, as is "adequacy" in a case like this where mere enhancement to reliability is at issue rather than imminent risk of harm. The real and identifiable adverse impact on Intervenors of Applicant's proposal causes UE's argument of indirect benefits to the system to pale to insignificance. Clearly, the balance here weighs in favor of avoiding the direct harm rather than providing indirect enhancement at the price of the public interest. Intervenors agree with Applicant that their interests as members of the public are required to be protected by the Public Service Commission and that it is the Commission's obligation to do "substantial justice" in this case. Section 386.610, RSMo. UE has not met its statutory duty to insure safe and reliable service in the public interest because its proposal is unjust and because better more viable alternatives have been ignored.

Applicant states that its evidence of need for the proposed Callaway-Franks line "is compelling." (Applicant's Brief, page 13.) Applicant's further elaboration shows this to be a vast overstatement. While Mr. Mitchell, Applicant's employee, did testify to past and potential future overloading on the Bland-Franks line, he and Ameren also adamantly insist that such overloading problem is not dangerous and that the line is not rendered unreliable as a result of the problem. At best, therefore, the evidence shows a "potential problem" which can and should be anticipated and

remedied in due course. It is not the problem at Bland-Franks, however, that is the issue here: It is the solution proposed by Applicant to this problem - - a solution designed to devastate property owners in the Callaway-Franks corridor for no good reason related to the problem. Rather than being "compelling," the evidence merely confirms that several solutions to the problem exist and that Applicant has chosen the one that does the most harm but is the most economically beneficial and profitable to Ameren UE.

On page 14 of its Brief, Applicant draws upon the testimony of Mr. James L. Ketter earlier addressed in this Brief. Such testimony provides no additional support to Applicant's proposal. Ketter only studied what Mitchell studied; and Mitchell studied only to the point where he found "free easements." No one - - not Ketter and not Mitchell or any other witness favoring the Application - - ever looked at the social, aesthetic, economic or cultural impact in the Callaway-Franks corridor, nor did anyone conduct any study of the less harmful Bland-Franks corridor alternative. Ketter's testimony adds nothing to that of Mitchell himself. Mitchell defines the "better electrical solution" as whatever is fastest and cheapest; Ketter defines the concept identically solely because the costs become part of rates. The public interest is not to be confined solely to such strict economic analysis.

Applicant also draws upon the testimony of Gary L. Fulks, an officer and engineer in Associated Electrical Cooperative, Inc., whose testimony mirrors that of Mitchell and Ketter. Fulks believes the Callaway-Franks line to be "superior" only because Ameren is willing to provide additional connections where AECI wants them, and this benefits AECI. As noted, AECI is not under the jurisdiction of this Commission, nor are its customers, nor is Mr. Fulks a joint applicant with Ameren UE on this Application. No matter what definition of public interest might be

employed, this Commission's determination should ignore the financial interests of AECI.

Interestingly, at page 16 of its Brief, Applicant does apparently feel compelled to respond to Intervenor's evidence that Applicant has ulterior motives not stated in its Application and is using the reliability concerns on Bland-Franks as a "smoke screen" to cover a plan with an entirely different purpose. Applicant has actually "cooked up" this Application with AECI to create substantial benefit to these two businesses at the expense of the public. Intervenors' Rebuttal of this denial is set forth in the cross-examination of Applicant's witnesses at trial, and it is for this reason that Intervenor requests each Commissioner to review such cross-examination as provided in Section 536.080.2, RSMo. The only evidence of Applicant supporting its claim of a pure motive to "protect the reliability of the system" is its witnesses repeated exhortation for the Commission to "trust us" to put the interests of the public first. The evidence belies the contention that this Applicant can be trusted at all, much less trusted to protect the public as opposed to protect its profits.

Applicant also insists that Intervenors simply desire to stop this line regardless of the merits of their proposal. Intervenors do desire to stop this line, not regardless of its merits but because the line as proposed has no merit. The correctness of Intervenors' opposition should not be judged by Intervenors' professed desire to stop the building of this line but on all of the evidence and the record. However, this Commission has often held that public acceptability of such proposed rates and projects is certainly not to be ignored. It is the lack of need and the lack of merit, as well as the obvious injury done to property owners and residents in the Callaway-Franks corridor, that makes this proposal intolerable. Intervenors point out the lack of Applicant's study of alternatives only as support for and explanation of why a public utility would be proposing such a harmful solution. Only a lack of study by UE of both the Callaway-Franks solution and the Bland-Franks solution

(indeed, every other solution) could possibly bring this bad idea into litigation before this Commission. Ameren UE's attempt to avoid the facts by criticizing Intervenors for correctly explaining them should be seen for what it is and rejected. Intervenors do not oppose this bad idea because they do not like it, but because it is a bad idea regardless of who likes it.

At pages 17-18 of its Brief, Applicant seeks to gain protection for its Application by insisting that it is no different than previously requested lines. Saying this does not make it so. Ameren points to no prior certificate case involving a high voltage power line that has provoked the kind of opposition from family farmers, residents and small businesses that this proposal has engendered. Indeed, the "uniqueness" and unusual nature of this proposal is made rather evident by the fact that such proposals ordinarily are not actively opposed through a hearing process before this Commission. Intervenors' are not unusually sensitive or angry people; they are not ludites who see no value in a safe and reliable electricity system; they are no different than ordinary citizens in rural Missouri throughout the state who object to needless destruction of their lives and land for the benefit of corporate profits of utilities. The "trend" noted by Ameren UE arises from this and similar instances of corporate overreaching at the expense of the public they are supposed to serve. Commission approval of this bad idea which causes injury in rural areas of Central Missouri will not end the growing opposition to this kind of heavy handiness, but instead will fan the flames of resentment and frustration that harmful proposals like this one create.

Moreover, the fact that Ameren UE and other utilities may have been "more careful" in the past to examine alternatives and justify the costs, both economic and social, of their activities says nothing in support of the current Application. The evidence is clear that no effort was made to examine alternatives or to develop the least harmful alternative before selection of the Callaway-

Franks line, because free easements (and presumably lower costs) ended any such careful inquiry. Why is it so much to ask a $3 billion-a-year energy company to simply study all the alternatives and show by evidence the superiority of its decisions? Ameren's answer is simply "because we choose not to do so." Intervenors respectfully reject this answer and assert that because each proposal by Ameren UE is different, a separate analysis of the public interest is required. Further, contrary to Applicant's suggestion, there is no principle of "stare decisis" that requires this Commission to broadly grant all requests of this Applicant simply because prior Commissions may have granted a prior similar requests. This case turns on the facts of this case - - and the evidence here is overwhelming that the needless harm sought to be committed by Applicant has not been properly evaluated or studied to come up with alternatives. Prior decisions of this Commission, whether wise or not, are unavailing as guidance on this Application de novo.

At page 22 of Applicant's Brief, Applicant acknowledges its burden of proof to show that its proposal serves the public convenience and necessity and that it is in the public interest. Applicant then, of course, proceeds to divert from its obligation to require "clear and convincing evidence" on the part of Intervenors that Applicant's proposed solution is "unsound and unreasonable." This is not the appropriate evidentiary standard. It is Applicant's burden is to show by a preponderance of evidence that its proposal serves the public interest. Where Intervenors have noted deficiencies in the Applicant's case-in-chief, it is incumbent on UE to provide further evidence supporting its showing that the proposal is nevertheless in the public interest. Intervenors have no burden to prove by some "clear showing" that Ameren UE did not study the alternatives (although the evidence is clear it did not); that Ameren UE did not study the actual impact socially, aesthetically and economically on the public in the area of the Callaway-Franks line (although the

testimony is categorically clear it did not); nor is it Intervenors' burden to prove that Ameren UE's deceptive proposal contains a new Linn substation, which plays no role whatsoever in achieving the goal of reliability that the Applicant purports to be the whole reason for the proposed new line (through Intervenors have clearly established such ulterior motive disguised in this Application as enhancement of reliability). Therefore, while Intervenors' showing is indeed clear that the Application is not in the public interest and does not serve public convenience and necessity, it is not required Intervenors do so and it is not necessary for the Commission to decide the case on that basis. Ameren's Application is simply deficient; such Application is poorly conceived, entirely unevaluated on other than economic considerations, injurious to actual members of the public in the area, and primarily motivated by greed rather than need based solely on a review of Ameren's own evidence. Ameren UE believes that this Commission should indulge "the benefit of doubt" in their favor. That is not this Commission's role or authority; it is unlawful for the PSC to agree with Ameren on issues where it has produced insufficient evidence to carry the burden of proof.

Throughout its Brief, Applicant engages in"burden shifting" to avoid the lack of evidence to support its claim that this proposal serves the public interest. This Commission should particularly note the use of this device on pages 23-27 to change the subject of this case from Applicant's burden to show why the proposal is in the public interest, to an analysis of Intervenors' evidence of why it is not in the public interest. However, Applicant fails entirely to respond to Intervenors' evidence that a viable (and perhaps superior) alternative Bland-Franks route exists; that Intervenors' property values will be adversely impacted by this high voltage line; and that Ameren will abuse its power of condemnation if a Certificate is granted, simply saying "this is all speculation." Applicant is wrong. It is important to note that regarding each of these issues, and

numerous others, no Ameren UE witness would actually commit to any statement that such "speculation" was untrue or that Ameren would perform according to any standards. Ameren has not shown in response to Intervenors' claims any lack of availability of the Bland-Franks route - - such alternative route is available. Ameren has not shown that Intervenors' property values will not be adversely impacted - - it is obvious they will be adversely impacted. Most importantly, Ameren has admitted in testimony that it is not "talking" to Intervenors in any meaningful way about acquiring easements until a Certificate is granted, and that they will not make offers for any easements until such Certificate is granted so that the leverage of condemnation may be brought to bear on negotiations. This is precisely the abusive situation Intervenors have feared. Up until the hearing in this case, Intervenors certainly hoped that their numerous concerns were "simply speculation," which could be and would be answered by Ameren; after the evidentiary hearing, however, such concerns have become facts, for Applicant's witnesses have confirmed that Intervenors' worst fears are real, substantial and indeed certain. There is no longer any speculation about Applicant and its proposal. Proof by a preponderance of evidence that the Callaway-Franks line proposal is in the public interest cannot be adduced by series of witnesses who simply say "trust me" on all questions dealing with protection of the public.

On page 27, Applicant resorts to an in terrorem argument, threatening dire consequences for the Commission if it should agree with Intervenors' positions. Applicant foresees consequences where the Commission might "routinely reject Applications to construct new lines" and "would find itself in the business of planning transmission systems throughout the state." Such overstatement is laughable. This Commission has never "routinely rejected" applications, and is not likely to do so hereafter. Further, this Commission is not interested in planning transmission systems, but it

certainly has the right, duty and obligation to review the transmission system planning of Ameren UE and other utilities for protection of the public interest. Making Ameren UE demonstrate that its proposed construction is in the public interest, and that it serves the public convenience and serves a public necessity is all that is being requested in this case. Such request for Commission review constitutes no change whatsoever from this Commission's historic role and practice. Intervenors are well aware that Ameren UE pays no attention to citizen objections and concerns. Indeed, this Applicant has all but promised in this proceeding that such concerns of the public will not be paid attention to. However, Ameren UE's suggestion that this Commission must subscribe to Ameren's approach and treat the public similarly is insulting. Ameren is apparently confused over the role this Commission plays - - this Commission acts as utility regulator, not as a utility advocate.

This Commission's review and approval of applications like Ameren's to assure they are in the public interest does not amount to dictating the location of transmission lines, nor does it impact any well supported and thoroughly evaluated management decisions of utilities. This Commission simply says yes or no to the Application based upon how well supported it is by evidence of the public interest; the Commission need not direct Ameren UE to the best solution, but it must require that Ameren demonstrate that Ameren's solution is the best.

At page 28-30, Applicant addresses the scope of this Commission's proceedings with a series of admonitions concerning the limits of Commission power. Intervenors find no reason to disagree with the Applicant's contentions that the Commission should not assess damages against UE (although UE may well be deserving of such); nor award pecuniary relief to Intervenors; nor enforce any legal or equitable principle not delegated to it by the legislature. The Commission is not being asked by anyone to determine the validity of easements, nor are Intervenors even asking the

Commission to direct Ameren to keep their empty promises concerning location of actual (as opposed to currently blanket) easements and its maintenance standards. All of this is simply irrelevant argument on Ameren's part to deflect the Commission's attention from its actual scope of review and jurisdiction. Because Ameren UE's evidence fails to support the proposition (on which it has the burden of proof) that the proposal in its Application serves the public interest, this Commission should deny grant of a Certificate of Convenience and Necessity. This is all that Intervenors, the Office of Public Counsel, and the law expects of the Commission. The expressed intent of Ameren UE to abuse its power of eminent domain and to locate its transmission lines under blanket easements according to its own desires are certainly consequences this Commission may consider in judging the public interest. Intervenors agree, however, as Applicant suggests in its Brief, that if this Commission grants a Certificate of Convenience and Necessity these abuses and empty promises will be entirely beyond this Commission's ability to correct or control. That is why the public interest is either protected here and now or not at all.

Beginning at page 32 Applicant's Brief addresses the "relevant public interest." We agree with Applicant that there is little case law directly applicable to this Commission which amplifies the definition of the "public interest" in such cases as this, but suggest that a plain meaning of the term be applied by this Commission. The term "public" applies to the broadest interests of the people as a whole, but equally applies to "a specific part of the people; those people considered together because of some common interest or purpose." See New World Dictionary of the American Language, 2nd Edition. The "public" is a "community," such as the one Intervenors live in. The context of "the public interest" in utility regulation shows no reason why only the broadest, most amorphous public interest should be considered; to the contrary, for issues such as public

convenience and necessity the interest is invariably local. It is for this reason that this Commission should reject the attempts of Applicant to define the public interest in terms of "all citizens in Missouri" or "all customers of Ameren UE" or even "all ratepayers in Missouri." The public interest in this case focuses primarily on Central Missouri, and in particular on a three county area where the proposed line will have all of its impact and will deliver none of its benefits. The interests of all citizens, customers and ratepayers more remote from the area of adverse impact are tertiary at best.

This Commission should categorically reject Applicant's attempt to define the public interest in terms of the ratepayers and customers of AECI and its system. (See Applicant's Brief, page 33-34.) This Commission has no authority, no jurisdiction, and no role in promoting the interests of electric cooperatives. Applicant's attempt to bootstrap its self-serving proposal into one serving the interests of rural citizens by purporting to benefit AECI is disingenuous. Any benefits to Ameren UE's customers (which include none of the Intervenors) are remote and indirect. Ameren UE is only creating expanded business opportunities for itself. No benefit inures to Intervenors or to Central Missouri, from this project. All of the burdens and adverse consequences will be borne by Intervenors and Central Missouri. The public interest at issue is the interest of the public in this three county Central Missouri area.

Applicant also purports to find a public interest in its "cooperation" with AECI on the current Application. The evidence, however, shows not cooperation but collusion. AECI, through the testimony of Mr. Fulks, at least makes no pretense of its strictly mercenary objectives. AECI gets benefit from the Callaway-Franks line. AECI could care less about reliability problems on the Bland-Franks line; AECI only wants its Rich Fountain connection. Applicant, on the other hand, appears to be unable to resist camouflaging its business expansion goals as "enhancement of

reliability" on the Bland-Franks line. Such reliability enhancement under the current proposal is a canard. A conspiracy between AECI and Ameren UE to make money and increase revenues under this proposal hardly constitutes evidence of their consideration of the public interest.

The discussion beginning on page 35 of Applicant's Brief concerning alleged regulatory requirements dictating that the additional transmission line must be built is largely irrelevant to the issue here under consideration. Suffice it to say that all of the requirements noted between pages 35 and 38 are not "requirements" but simply restrictions. Ameren simply cannot do certain of its profit making activities under certain circumstances of federal and state regulation. That is unfortunate, but hardly an emergency. There is not one sentence or statement in Section IV of Applicant's Brief requiring that the Callaway-Franks line be built rather than some other solution. Again, Intervenors do not argue that Ameren should not research, analyze and determine the best solution to any of its problems for review by Commission regulators. The requirement, however, is that Ameren UE do the research and evaluation and that it choose the best solution while balancing all elements of the public interest. Because Ameren has not done this, it not only is not in compliance with legal requirements, but is simply asking us to "roll the dice" on whether its project best serves the public interest.

Intervenors reject the conclusion stated by Applicant in Part V of its Brief, page 39, suggesting that Ameren is legally required only to seek permission for 20 miles of its 54 mile Callaway-Franks line before this Commission. For the reasons previously stated herein (in response to Staff's Brief on the same issue), it is a misreading of the authorities to conclude that review of the entire project proposed in Ameren UE's Application is not required. The cases cited by both Staff and Ameren UE are inapplicable to this case as they are different on their facts and subject to a

conflicting analysis. Applicant is not asking for any more limited review. Indeed, this Commission would be well served to accept UE's statement of practice of always seeking a Certificate for the entire line in cases such as this. (See Applicant's Brief, page 39.)

On page 40, Part VI of Applicant's Brief, UE defends its failure to describe the route of the proposed line. Intervenors respectfully suggest that Applicant has it backwards in its Application: Rather than "generally" identifying the corridor where the line may be located, leaving for later independent judgment of Applicant the precise location on each property taken, this Commission should require a fixed centerline for the easement so that the Commission and the public can know the precise location and precise impact of the proposed line. If, after approval of a Certificate of Convenience and Necessity, a separate agreement between a landowner and Ameren UE is found desirable or necessary (not a likely occurrence, we assume, unless it serves Ameren's financial interests) the precise centerline may be modified by such agreement entered thereafter. To leave the location across vast sections of farmland covered by blanket easements totally indefinite in the Application prohibits this Commission from reaching any sensible judgment that the proposed line serves the public interest. Such a judgment of the public interest cannot be reached by this Commission in the absence of such location information, and any decision granting a Certificate on this Application will risk being overturned on judicial review as being unsupported by competent and substantial evidence on the record.

By requiring Applicant to identify the location of the line, this Commission would not be dictating the location of the line, but simply requiring Ameren to identify the location of the line it proposes. Applicant's arguments that this Commission would be exceeding its jurisdiction by requiring simple compliance with Commission rules requiring a complete proposal in this regard are

specious and should be ignored.

Finally, on page 44 of Applicant's Brief there is a story presented concerning the idea for the Loose Creek substation which Ameren alleges is "uncontroverted." This tale is most certainly controverted by Intervenors and it has no support in the record. Notably missing from Applicant's story is any evidence or documentation indicating that the Callaway-Franks line was adopted as the "best solution" prior to the idea for the Loose Creek substation. The substation and its benefits to Applicant dictated this solution. The Loose Creek substation is the tail that wags the Callaway-Franks dog. Without this Loose Creek substation, enabling exploitation of new energy markets to the west, Ameren UE would not build the Callaway-Franks line. Ameren UE even admits that the Loose Creek substation has nothing to do with a solution to the problems of overloading on the Bland-Franks line. Intervenors respectfully suggest, should a Certificate for this Application be considered under Section 393.170, RSMo, that this Commission test Ameren UE's credibility by conditioning any certificate on the elimination of the Loose Creek substation from the plan. We suspect that even the suggestion that the Commission might do so would prompt Ameren to cancel this whole project. This approach would also allow this Commission to answer the rhetorical questions propounded on pages 45-46 of Applicant's Brief, which questions exist solely because Ameren refuses to study the situation to find those very answers: UE does not know whether "easements would be available" for a new Bland-Franks line because it has not inquired; UE has not shown any evidence of overloading on Bland-Franks line that is a "serious problem;" UE has not shown, because of lack of study, that the Bland-Franks line is "the best solution;" UE has not shown the Callaway-Franks solution to be "reasonable and sound" because of lack of any real evaluation of alternatives. But UE, we submit, has lived down to their reputation for lack of verity, by those

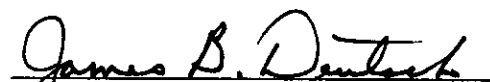
witnesses Ameren UE presented at hearing who, "to the best of their ability," have said nothing about, and made no commitments to the Commission or Intervenors concerning, protection of the public or the public interest.

CONCLUSION

Based upon the evidentiary record before this Commission, Applicant has failed to meet its burden of proof by a preponderance of evidence that the proposed Callaway-Franks line serves the public interest. Having failed in this regard, Ameren UE is not entitled to the grant of a Certificate of Convenience and Necessity by this Commission, nor is Applicant entitled to this Commission's permission and authority under Section 393.170, RSMo, for the construction of the proposed Callaway-Franks line.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: 

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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 6th day of December, 2002:

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