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June 6, 2003

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED<sup>3</sup>**

JUN 06 2003

RE: Case No.: EO-2002-351  
Ameren UE Callaway-Franks Line

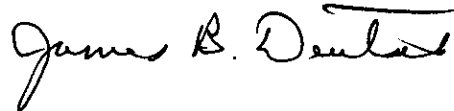
**Missouri Public  
Service Commission**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of a Response of Intervenor Concerned Citizens of Family Farms and Heritage to Ameren UE's Statement of Willingness to Voluntarily Agree to the Imposition of Conditions on any Commission Order Approving Application.

Copies of this filing have on this date been mailed to counsel of record. Thank you for your attention to this matter.

Sincerely,



James B. Deutsch

JBD:krw  
Enclosures

cc: Dana K. Joyce, Missouri Public Service Commission  
John B. Coffman, Office of the Public Counsel  
Joseph H. Raybuck  
James Lowery

FILED<sup>3</sup>

JUN 06 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

Missouri Public  
Service Commission

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

**RESPONSE OF INTERVENOR CONCERNED CITIZENS OF  
FAMILY FARMS AND HERITAGE TO AMEREN UE'S STATEMENT  
OF WILLINGNESS TO VOLUNTARILY AGREE TO THE IMPOSITION OF  
CONDITIONS ON ANY COMMISSION ORDER APPROVING APPLICATION**

COMES NOW Intervenor, Concerned Citizens of Family Farms and Heritage, by and through counsel, and pursuant to the "Second Order Directing Filing" issued by this Commission on May 30, 2003, makes the following response.

**A.**

Intervenors agree with the Brief Statement of Relevant Procedural Background set forth by Ameren UE in paragraphs 1-9 of their Statement.

**B.**

Ameren UE states that "this case has included substantial discussion of conditions requested by Intervenor on any approval of the Company's Application." Intervenor disagree. Very little "discussion" has been given to the conditions proposed by Intervenor in its Statement of Position filed September 19, 2002, page 4, paragraph E. Moreover, no discussion has been given to Ameren UE's "respectful suggestions" that any of these conditions requested by Intervenor relate to subjects beyond the Commission's jurisdiction or authority. While the Company's willingness to consent and agree to some minor conditions is not unappreciated by Intervenor, Concerned Citizens

respectfully suggests that this Commission not be confused by this feigned reasonableness into believing that the proposed high voltage transmission line is in the public interest. It is not, and the conditions proposed by Ameren do not make it so.

The proposed Callaway-Franks high voltage line is not in the interest of the State of Missouri, nor in the interest of Missouri rate payers, and is certainly not in the interest of the citizens in the Callaway-Franks corridor who will bear the entire burden of this unneeded and unwise plan.

Intervenors agree with the Company's description of the unique issues and difficulties presented by its Application in this case set forth in paragraphs 11 and 12, page 3 of its Statement. The large time period between AECl's acquisition of easements and the now proposed construction; the emotionally charged issues arising from this investor-owned utility usurping properties originally thought to be granted to a rural electric cooperative in a corporate "bait and switch" arrangement; and the sincere land owner concerns, objections and outrage over this proposed line lie at the very heart of Intervenors' reason for taking the extraordinary step of intervening in this case. However, Intervenors reject the Company's attempt to minimize the fact that approximately 40% of the proposed Callaway-Franks line is located outside Ameren UE's certificated service territory. There is no claim of or authority for "partial jurisdiction" of the Commission in this case. The Company is fully subject to the jurisdiction of this Commission in determining the public interest.

Typical of Ameren's approach to the public interest is paragraph 14, page 4 of its Statement where it "conditions" its willingness to consent to any conditions on approval of a certificate on or before July 15, 2003. As usual, the public interest is secondary to the convenience to Ameren UE's plans. On principle alone, such deadlines for PSC action must be rejected by the Commission.

Finally, the Company's "conditions on their acceptance of conditions," set forth in paragraph

15, page 4, are entirely unacceptable to Intervenor, and they should be entirely unacceptable to this Commission. Binding this Commission and its future jurisdiction to Ameren UE's insistence that in future cases the Commission has no jurisdiction to order similar or greater conditions is contrary to law and contrary to the policies of the Public Service Commission.

**C.**

Ameren UE sets forth in paragraphs 16 and 17 of its Statement, and in its Exhibit A, a list of what it describes as "conditions" the Company consents to. Intervenor note that the list is solely what Ameren UE said it would do at hearing and in its filed testimony. Intervenor are somewhat surprised that Ameren UE would use what it has already assured the Commission it would do as leverage for a decision in haste. Intervenor suspect Ameren's Statement of Willingness is only filed now in order to divert the Commission's attention from Intervenor's primary complaint that the line, even subject to these post-certification conditions, is objectionable and not in the public interest. Under subsection C of its Statement, Ameren UE submits to nothing more than the minimal requirements it has already imposed upon itself prior to this time. Therefore, nothing new is presented in such proposed conditions that should compel the Commission to more favorably view Ameren UE's flawed and harmful Callaway-Franks line proposal.

**D.**

Intervenor find the Statement in paragraph 18 (that Intervenor's position is that the certificate should not be granted to Ameren UE by this Commission) to be entirely correct. Intervenor strongly here reiterate that position. Ameren's alleged "overwhelming substantial and competent evidence supporting approval," is non-existent in addressing the Intervenor's evidence of concerns and flaws. For instance, no evidence of any careful study of the proposed Callaway-

Franks line plan has been credibly put forth by Ameren UE. Instead, the evidence shows that Ameren UE had a totally different solution (i.e., a new Bland-Franks line) in mind until it obtained “free easements” from AECL, and then suddenly realized it could better exploit its Jefferson City area market through a new and previously unmentioned Linn substation. Clearly, no evidence presented by Ameren addresses the disruption to the lives and businesses of the public in the Callaway-Franks corridor; nor does Ameren UE even attempt to explain how any Missourian is benefitted by creating this new “transmission super highway” for electric energy generated outside Missouri and destined for use outside Missouri. Finally, Ameren still refuses to identify the exact location of the new line (which would allow Intervenor to better know and quantify the harm, injury and disruption caused them) and makes no effort to quantify the benefit to any Missouri customer from its improved ability to ship non-Missouri energy to non-Missouri destinations. Until these questions are answered by a proper study, and by competent evidence pursuant to a proper Application, the Intervenor’s request that the PSC deny the requested certificate will remain unchanged.

While conditioning its acceptance of any reasonable conditions requested by Intervenor on agreement to approve the Company’s request by the Company’s deadline, paragraph 19 and Exhibit B of Ameren UE’s Statement purports to agree to “some” of the conditions requested by Intervenor. First, Intervenor reiterate that it is the Public Service Commission and not Ameren UE that sets the schedule for decision in this and all other cases. Attempting to rush the Commission’s judgment in this way is simply Ameren UE’s method of avoiding the deficiencies in its Application, evidence and testimony. The requirement that this Commission carefully study this case and the record in reaching a decision cannot be held hostage to time limits imposed by this applicant.

Second, with regard to Exhibit B and the six conditions consented to by the Company,

Intervenors respond as follows:

**Ameren UE's Proposed Condition No. 1:** Intervenors find the Proposed Condition No. 1 to be acceptable, but Intervenors note that Ameren's consent to the condition is no more than an agreement to abide by the law in Missouri prohibiting its taking of property by eminent domain. See Section 393.030, RSMo. Agreement to obey the law is no reason for special consideration of this flawed Application.

**Ameren UE's Proposed Condition No. 2:** Ameren UE's Proposed Condition No. 2 is insufficient to meet the condition proposed by Intervenors. Substituting a tiny "setback" requirement for the minimally acceptable requirement proposed by Intervenors is not sufficient and provides no cause or reason for this Commission to grant favorable consideration to Ameren UE's Application within the time frame insisted upon by applicant. The evidence justifies a 300 foot set back as proposed by Intervenors.

**Ameren UE's Proposed Condition No. 3:** As previously noted, Ameren UE consents in Condition No. 3 only to do that which it has already committed on the record to this Commission to do. Such consent to do that which must be done anyway constitutes no cause or reason for this Commission to grant favorable consideration to Ameren UE on the tight time schedule insisted upon by applicant.

**Ameren UE's Proposed Condition No. 4:** Intervenors accept Ameren UE's Proposed Condition No. 4 as an assurance that, contrary to past practice, Ameren will comply with the law in the State of Missouri. However, once again, Ameren UE merely consents to do that which it is required to do anyway and such acquiescence constitutes no cause or reason for this Commission to grant favorable consideration to Ameren UE on the tight time schedule insisted upon by applicant.

**Ameren UE's Proposed Condition No. 5:** Ameren UE's Proposed Condition No. 5 does not meet the requirements of Intervenors proposed conditions and is instead a reiteration of Ameren UE's position of minimal compensation to property owners. A mere restatement of the insufficient position it has taken at hearing on compensation to property owners constitutes no condition at all and no cause or reason for this Commission to grant favorable consideration to Ameren UE's proposal on the tight time frame insisted upon by applicant.

**Ameren UE's Proposed Condition No. 6:** The shortcoming of Ameren UE's Proposed Condition No. 6 is similar to most of the foregoing proposed conditions: It is no concession at all and is illusory. While they agree that property owners may complain to the Commission for breach of the foregoing conditions, (all of which they

have either previously agreed to in testimony or are required by law to follow) applicant carefully omits the Intervenor's proposed remedy, which would guarantee that Intervenor's right to be heard by the Commission is not an empty promise. Intervenor rejects Ameren UE's facetious characterization of this as a "condition" it is willing to be subject to. It is instead an agreement to do nothing more than would be required without the proposed condition. It offers nothing that would cause this Commission to grant favorable consideration to Ameren UE's proposal on the tight time frame insisted upon by applicant.

E.

Intervenor finds the additional condition set forth in paragraph 20(a), page 6-7 of its Statement, to be reasonable, so long as it is clearly understood that the proposed payment amount per acre of timber land cleared is a minimum and that a property owner may insist upon a higher more accurate per acre payment amount. With regard to the additional condition 20(b), page 6 of Ameren UE's Statement, this is of little real value and merely begs the question raised by Intervenor concerning the "blanket" easements. Intervenor wishes to know the location of the line before it is built; identification and recording of the easement and line after it is built has no value to Intervenor or other property owners whatsoever. As a condition, this is illusory and constitutes no cause or reason for the Public Service Commission to grant favorable consideration to Ameren UE's proposal on the tight time frame insisted upon by applicant.

F.

At the initiation of its Application, Ameren UE sought to have this Commission rush its proposal through before anyone had the opportunity for careful study of it and consideration of its harmful effects. We have now come full circle. Having been required to reveal its flawed plan, Ameren UE now wishes to rush the Commission to its final decision without allowing proper time for consideration by the Commission of the record. On principle alone, this Commission should reject any demand by Ameren for an approval by July 15, 2003. As noted, no concessions to conditions have actually been made, and the Company's assertion of willingness to be reasonable is purely illusory. Intervenors respectfully suggest that faster approval of a flawed plan, which is subject to so many criticisms left unresponded to by the Company in the evidentiary record, creates significantly greater risk to the public interest than the purported overloading problems on the Bland-Franks line.

Moreover, Intervenors once again strongly assert their rights to this Commission's most careful consideration in this case, and to a certification by each Commissioner that they have fully complied with the requirements of Section 536.080.2 which states:

2. In contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs.

Given the fact that most Commissioners did not attend the entire evidentiary proceeding, and that there are new Commissioners who have taken office since submission of this case, Intervenors respectfully suggest that it is of critical importance that this statutory directive be adhered to. See *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20 (Mo. banc 1976). This

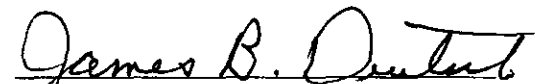
Commission should take whatever time is needed to reach a correct decision on the evidence, record and Briefs.

**WHEREFORE**, Intervenor respectfully suggests that Ameren UE's "Statement of Willingness to Voluntarily Agree to the Imposition of Conditions on any Commission Order Approving Application" constitutes no statement of agreement to Intervenor's conditions and does not satisfy applicant's burden to show that its proposed Callaway-Franks high voltage transmission line serves the public interest. The Company agrees mostly to matters it has already agreed to on the record, and agrees to obey the minimal requirements of law. As consideration to Intervenor and this Commission for immediate approval of its Application, such statement utterly fails of its purported purpose. Intervenor respectfully suggest that the Ameren UE's Statement of Willingness be ignored by this Commission; and that the Commission instead proceed to a decision of denial of the Application of Ameren UE in this case.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By:



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**CERTIFICATE OF SERVICE**

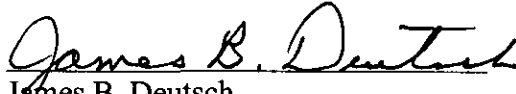
I hereby certify that true and correct copies of the above and foregoing document were sent U.S. Mail, postage prepaid, to the following parties of record on this 6th day of June, 2003:

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