BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the matter of the proposed amendment of rule 4 CSR 240-3.105.	)))	**Case No. EX-2015-0225**

COMMENTS OF DOGWOOD ENERGY, LLC REGARDING PROPOSED RULE AMENDMENTS

Comes Now Dogwood Energy, LLC (Dogwood) and for its comments regarding the proposed amendments to rule 4 CSR 240-3.105, states to the Commission:

Introduction

1. Rule 4 CSR 240-3.105 addresses the critical issues of Commission review and authorization of substantial capital investments by regulated electric utilities. The Commission should ensure that the amended rule will enable it to perform all of its responsibilities under Section 393.170 RSMo. While the proposed rule addresses several important gaps in the current regulation, it still leaves a substantial hole regarding major projects of Missouri utilities that would be built outside the state. Accordingly, Dogwood supports the proposed changes (with some fine-tuning), but also urges additional measures to address this significant omission.

2. The Commission should evaluate the proposed rule amendments by asking whether the revised rule will enable it to fulfill its mission to protect the public interest and ratepayers. Given the substantial investments and costs involved (electric utility plant construction routinely involves hundreds of millions of dollars), the Commission should make sure that the rule fully addresses the scope of its authority.

3. "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 Co. v. PSC, 179 SW2d 123, 128

(Mo App 1944). A remedial statute such as Section 393.170 should be liberally construed to fulfill its intended purpose. See, e.g., State ex rel Laundry Inc v PSC, 34 SW2d 37, 42-43 (Mo 1931). Any doubts about the applicability of such a remedial statute should be resolved in favor of applying it to protect the public interest, and exceptions should be narrowly construed. See Utility Service Co., Inc. v. Department of Labor and Industrial Relations, 331 SW3d 654, 658 (Mo. 2011). Accordingly, the Commission's authority to protect the public interest pursuant to Section 393.170 should not be artificially constrained by a narrow interpretation. Further, given that the Courts have held that the Commission has not been fully exercising its authority under Section 393.170, rule changes should be viewed as necessary, appropriate, and at this point overdue.

Requirements of Section 393.170

4. Pursuant to Section 393.170, an electric corporation cannot "begin construction of … electric plant[1] … without first having obtained the permission and approval of the commission." The Commission is authorized to approve such construction when it determines after "due hearing … that such construction … is necessary or convenient for the public service." The Courts have held that this part of the statute requires separate approval of any regulated utility production (generation) facilities, regardless of location, as well as transmission facilities outside of any previously approved service area. See State ex rel Cass County v. PSC, 259 SW3d 544, 549 (Mo App 2008); StopAcquila.org v. Aquila, Inc., 180 SW3d 24, 35 (Mo App 2005).

5. Under the statute, an electric corporation also cannot exercise any franchise right or privilege "without first having obtained the permission and approval of the commission" as well as any required municipal consents. As with construction projects, the Commission must

[1] See definitions in Section 386.020.

hold any "due hearing" and determine whether the exercise of such rights and privileges "is necessary and convenient for the public service." The Courts have held that "service area" approval under this part of the statute includes the authority to install transmission and distribution facilities within that area. See State ex rel Cass County v. PSC, 259 SW3d 544, 549 (Mo App 2008); StopAcquila.org v. Aquila, Inc., 180 SW3d 24, 35 (Mo App 2005).

6. The evaluation of necessity under the statute protects the public by making sure that a project is "an improvement justifying its cost." State ex rel Intercon Gas v. PSC, 848 SW2d 593, 597-98 (Mo App 1993).

7. Section 393.170 authorizes the Commission to impose "reasonable and necessary" conditions upon any approval of electric plant construction or any approval of franchise rights and privileges.

8. The statute further provides that any authority that is not exercised by an electric utility within two years from the grant thereof "shall be null and void." Accordingly, long-term plans cannot be approved, but rather only imminent projects.

9. The Courts have held that the Commission cannot approve construction of electric production plant by a regulated utility after-the-fact, but rather pursuant to Section 393.170 can only approve such construction in advance, based on a contemporaneous hearing and record. See State ex rel Cass County v. PSC, 259 SW3d 544, 549-50 (Mo App 2008). The Courts have explained the public policy behind this requirement at length:

> The language of subsection 1 [of 393.170] is clear and unambiguous. It refers only to pre-construction approval. The statute's plain terms refer to such pre-construction approval not once, but twice, specifying that a utility shall not "*begin* construction ... without *first* having obtained" the necessary authorization. The purposes of such pre-approval are obvious. The PSC is charged with considering and protecting the interests of the general public as well as the customers and investors of a regulated utility. It must balance those interests on a statewide basis, not merely considering a particular utility's operating area in

> isolation. {citation omitted](noting that "uniform regulation of utility service territories, ratemaking, and adequacy of customer service is an important statewide governmental function"). This function requires a balancing of the needs and interests of ratepayers and investors. Although the PSC always has the power to disallow capital improvements in a utility's rate base, that *post hoc* authority is toothless if a major disallowance would jeopardize the interests of either ratepayers or investors. [citation omitted](noting that compliance with subsection 1 allows for consideration of all the relevant constituencies and interests "without muddying the waters of a future rate case"). Subsection 1 [of 393.170] allows the PSC to consider and weigh all of these factors, as well as location and zoning, prior to construction.

Id. The Courts have observed further that:

> By requiring public utilities to seek Commission approval each time they begin to construct a power plant, the legislature ensures that a broad range of issues, including county zoning, can be considered in public hearings before the first spadeful of soil is disturbed. There is nothing in the law or logic that would support a contrary interpretation. Moreover, the county zoning statutes discussed above also give public utilities an exemption from county zoning regulations if they obtain the permission of a county commission, after hearing, for those improvements coming within the county's master plan. This strongly suggests that the legislature intended that a public hearing relating to the construction of each particular electric plant, take place in the months *before* construction begins, so that current conditions, concerns and issues, including zoning, can be considered, whether that hearing is conducted by the county or the Commission.

StopAcquila.org v. Aquila, Inc., 180 SW3d 24, 37-38 (Mo App 2005).

10. Thus, under Section 393.170 the Commission must review proposed construction of electric generation facilities by regulated utilities in advance, as to necessity, cost, location, and other relevant concerns. It must conduct such review of the prudence of the project based on contemporaneous facts, not long-term future projections. StopAcquila.org v. Aquila, Inc., 180 SW3d 24, 34 (Mo App 2005). Such pre-approval is required because once the company builds the facilities and seeks to recover the costs in its rates, the Commission is not in a sound position to balance the interests of ratepayers and utility shareholders. Rather, one group or the other can be substantially harmed by an after-the-fact decision. See State ex rel Cass County v. PSC, 259

SW3d 544, 549 (Mo App 2008); StopAcquila.org v. Aquila, Inc., 180 SW3d 24, 35 (Mo App 2005). Or as a prior Commission put it, an after-the-fact request for approval places "the Commission in a position where a meaningful decision cannot be made." In the matter of the application of Union Electric Co for permission and authority to construct, operate and maintain two combustion turbine generating units, Case No. EA-79-119, 24 MoPSC NS 72, 78 (1980).

Dogwood's Involvement in Review of Current Rule

11. Dogwood initially proposed substantive changes to rule 3.105 by petition filed on January 8, 2014 in Case No. EX-2014-0205. While the Commission denied that petition, it simultaneously opened a working docket to consider rule changes in File No. EW-2014-0239. After substantial industry collaboration in that working docket, Staff submitted the pending proposed amendments. The Commission then ordered publication and further proceedings in this matter.

12. Dogwood is a limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Missouri. Dogwood owns a majority interest in the Dogwood Energy Facility, a 650 MW natural gas-fired, combined cycle electric power generating facility located in Pleasant Hill, Missouri. The other owners of the plant include Missouri municipal utilities, such as the City of Independence and members of the Missouri Joint Municipal Electric Utility Commission. The Dogwood Energy Facility is the largest combined cycle plant in the state, and represents approximately 3% of the total generating capacity and 35% of the combined cycle capacity in the state. Dogwood is also a customer of KCPL GMO and a member of the Southwest Power Pool.

13. In its rulemaking petition, Dogwood cited several examples of utility projects which had evaded any pre-approval process due to lack of clarity in the Commission's current rules: (1) KCPL GMO's acquisition of contract rights regarding the municipal Crossroads generation plant, valued at $61.8 million after-the-fact by the Commission; and (2) Empire's $175 million conversion of its Riverton Unit 12 combustion turbine electric generation facility to a combined cycle facility. Dogwood explained that such gaps in regulatory oversight are contrary to the interests of ratepayers and shareholders, and also can have a direct negative impact on independent suppliers like Dogwood and its co-owners when unneeded generation is added to the market in lieu of more cost-effective options.

14. Monopoly utilities should not make major facility commitments without taking into account all relevant factors and options, or without allowing the Commission an adequate opportunity to make certain that such expensive commitments are in the public interest. Further, such utilities should not jeopardize the interests of shareholders by failing to obtain advance approval of major projects and by instead facing the risks that attend regulatory scrutiny after-the-fact such as the complete dismantling of a generation plant - as would have recently been required absent emergency legislation after a court decision. See StopAquila.org v. Aquila, Inc., 180 SW3d 24, 34 (Mo App 2005) and now repealed Section 393.171.

15. Dogwood fully participated in the Commission's rulemaking workshop meetings and filed several sets of comments on draft rule changes. The workshop process was ably administered by Staff and allowed for a great deal of industry collaboration. As a result, Dogwood largely supports the proposed rule changes now pending before the Commission. A well- clarified rule should minimize future rate case disputes (such as the lengthy litigation over

the Commission's after-the-fact rulings on GMO's Crossroads plant)[2] and thereby result in cost savings, rather than any negative fiscal impact. In rate cases subsequent to a pre-approval proceeding, Commission review can then focus upon the prudence of specific implementation costs, rather than the prudence of the utility's decision to move forward with a project (absent some extreme unforeseen development).

Dogwood's General Support of Proposed Rule

16. The proposed rule changes provide greater clarity as to the two types of applications that must be pursued under Section 393.170 by regulated utilities. As discussed above, such applications can either seek approval of specific plant construction or approval of a new service area. The "Purpose" provision of the proposed rule incorporates these aspects of the statute and the essence of prior court rulings in this regard, explaining that a service area approval includes authority to build transmission plant to serve customers in the authorized area and by underscoring that separate plant authorizations are required for all generation plant construction projects regardless of location relative to service area. Based on recent proceedings concerning substations, adding express references to such projects would seem beneficial. Further clarity could also be achieved by expressly stating that separate approval is required for transmission and substation plant that is outside the service area or not to be used to serve customers within the service area. Additionally, a reference to distribution and substation plant as part of service area authority could provide clarity.

17. The proposed rule changes also provide greater clarity regarding the type of electric generation plant project that requires pre-approval. By adding a definition of "construction", the Commission will make clear that any substantial project must be approved in

[2] See Case Nos. ER-2012-0356 and ER-2013-0175, and related appeals at 408 SW3d 153 (transfer denied by Mo Sup Ct and cert denied by US Sup Ct) and unreported second appeal WD76166/76167.

advance, consistent with the requirements of Section 393.170. Environmental upgrades and generation plant fuel source conversions or other conversions can involve hundreds of millions of dollars and require as much scrutiny as original plant construction in order to protect the interests of all concerned. Likewise, the proposed rule properly recognizes that financing methods should not interfere with Commission review; capital leases can be included in rate base and should be examined in advance. Similarly, monopoly utility acquisition of electric plant built by others must be reviewed, to prevent unlawful avoidance of Commission scrutiny.[3] The proposed rule also properly addresses these points.

18. The proposed broad definition of "construction" appropriately follows the principles laid down in the prevailing wage statutes, which also apply to regulated utilities, by distinguishing between construction and maintenance. See Sections 290.210-340 RSMo. Under these statutes, "public works" construction includes "any work done directly by any public utility company when performed by it pursuant to the order of the public service commission" other than maintenance. By including an appropriate definition of "construction", the proposed rule properly follows court guidance that the word should be given similar meaning throughout various overlapping statutory schemes. See Hadel v. Board of Education of School District of Springfield, 990 SW2d 107, 112-13 (Mo. App. 1999)(Word "construction" should be interpreted consistently in all statutes governing entity subject to prevailing wage law); State ex rel Smithco Transport v, PSC, 316 SW2d 6, 11-13 (Mo 1958)(PSC statutes should be interpreted and applied consistent with other applicable statutes); Utility Service Co. Inc v. Depart of Labor and Industrial Relations, 331 SW3d 654, 660 (Mo 2011)(term "construction" should be broadly

[3] Some such transactions would also be subject to review under Sections 393.190-393.220, but all should be reviewed by the Commission under Section 393.170. The rationale for Commission review remains the same: an ill-advised major transaction or project poses substantial risks for Missouri ratepayers.

construed in statutes that protect public interests); Warren Davis Properties, LLC v. United Fire & Casualty Co., 111 SW3d 515, 522 (Mo App 2005)(renovation is construction).

19. The proposed rule appropriately requires utilities to demonstrate that they have considered all reasonable alternatives to the proposed major capital investment, and used competitive bidding practices in that process. The Commission cannot effectively evaluate a major construction project without being able to determine that the proposed costs are reasonable. A requirement of competitive bidding practices is consistent with the mandates of the Commission's integrated resource planning rules regarding supply side facilities, 4 CSR 240-22.070(6)(E), and its affiliate transaction rules, 4 CSR 240-20.015(3)(A), as well as state purchasing practices under Section 34.040 RSMo. It is also consistent with regulatory practices in other states. See, e.g., Arkansas (Admin Code 126.03.14), Connecticut (RCSA 16-244c-1 et seq), Indiana (IC 8-1-8.5-5), Iowa (IAC 476.53), Maryland (COMAR 20.40.02 et seq, 20.52.04.01 et seq)), New Jersey (NJAC 14:4-3.3), Oklahoma (OAC 165.35-34-1 et seq), Pennsylvania (52 PC 57.34), and Texas (16 TAC 25.272 et seq).

20. Improper influence, whether from affiliated relationships or less formal connections, is an insidious thing – it can be hard to identify, hard to prove, and hard to undo. Monopoly utilities must be required to use competitive bidding procedures when evaluating major capital projects to guard against improperly influenced deals. The risks of harm to the public are too great, given the large dollar amounts involved in electric plant projects.

Key Omission from Proposed Rule - Review of Out of State Projects

21. While the foregoing aspects of the proposed rule are all beneficial and important, the proposed rule still does not fully address the scope of the Commission's authority and responsibility under Section 393.170. Throughout the proposed rule changes, the language

purports to limit the Commission's authority to consider proposed electric plant construction to projects that are located "in Missouri." This geographic limitation is not lawful.

22. The Commission has jurisdiction over all public service activities of an electric utility that is subject to its regulation, which includes all generation plants built by or for such monopoly utilities. See, e.g. State ex rel. and to Use of Cirese v. PSC, 178 SW2d 788, 790 (Mo. App. 1944); see also Sections 386.020, 386.030, and 386.250. In general, generation plants are not subject to federal regulation. See 16 USC 824. Hence, absent Commission advance review, both ratepayers and investors will face the substantial risks posed by an adverse after-the-fact ruling when the Commission must decide whether to allow substantial plant construction costs to be recovered in rates. As the Missouri Courts have held, Section 393.170 must be applied to prevent such a collision of ratepayer and investor interests.[4] Physical location of a plant outside the state does not preclude a utility from seeking rate recovery, nor does it lessen the Commission's duty to examine the project in advance under Section 393.170.

23. The Commission has authority to examine all "methods, practices, regulation and property employed by public utilities." State ex rel Laclede Gas v. PSC, 600 SW2d 222, 228 (Mo App 1980). The statutes governing the Commission and public utilities establish a "complete scheme for the supervision and regulation of **all** the activities of an electric utility by the commission." PSC v. Kansas City Power, 31 SW2d 67, 71 (Mo 1930)(emphasis added).

24. The Commission has recognized that it has full authority to examine all major utility actions that could have a detrimental impact on ratepayers, such as acquisition of a utility that only operates in another state. See, e.g. In the Matter of the Application of The Kansas Power and Light Company and KCA Corporation for Approval of the Acquisition of All Classes

[4] See State ex rel Cass County v. PSC, 259 SW3d 544, 549 (Mo App 2008); StopAcquila.org V. Aquila, Inc., 180 SW3d 24, 35 (Mo App 2005).

of the Capital Stock of Kansas Gas and Electric Company, to Merge with Kansas Gas and Electric Company, to Issue Stock, and Incur Debt Obligations, Case No. EM-91-213, 1 MoPSC3d 150, 159 (1991).

25. The Commission has exerted authority over the proposed sale of generation facilities located in Illinois by Ameren under Section 393.190. See In the Matter of the Application of Union Electric Company Doing Business as AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easement and Contractual Agreements to Central Illinois Public Service Company, Doing Business as AmerenCIPS, and in Connection Therewith, Certain Other Related Transactions, Case No. EO-2004-0108, 13 MoPSC 3d 266, 289-90 (2005). The Commission expressly held therein that the governing statutes do "not make any distinction as to the location of the property, whether in Missouri or elsewhere." The Commission based its conclusion on AmerenUE's status as an electric corporation and public utility subject to Commission regulation under Chapters 386 and 393. The Commission found that the proposed transaction had both direct and indirect impacts on Missouri operations, including reduction of native load. See 13 MoPSC 3d 266, 289-90 (2005). The Commission has likewise previously exercised its jurisdiction over Empire's interest in the Plum Point generation plant in Arkansas. See, e.g., Case EF-2006-0263 (approval of construction financing); Case EO-2010-0262 (approval of construction accounting).

26. In the case regarding Ameren's Illinois generating plants, when Ameren raised questions about the Commission's jurisdiction, the Staff strongly disagreed, and pointed to prior examples of Ameren and KCP&L assets located in other states over which the Commission had asserted jurisdiction. Specifically, Staff pointed to Case Nos. EM-92-225, EM-92-253, EM-91-213, and EF-87-29. See Staff Reply Brief, p. 8-9, Case No. EO-2004-0108. Staff argued for a

broad interpretation of Commission jurisdiction, "to protect the public from self-interested actions of a monopoly utility company." Id at 10-11.

27. If a Missouri-regulated utility proposes to construct an electric generating unit in another state, such a project could certainly impose detrimental impacts on Missouri ratepayers. An imprudent project could impact the utility's overall ability to render safe and adequate service, could increase rates, could increase administrative and capital costs, or have other impacts in Missouri. Id. Additionally, even if there is no initial plan to include part or all of the plant in Missouri rate base for ratemaking purposes, such plans could change at any time and the Commission would be faced with a post-construction issue contrary to the provisions of Section 393.170. See State ex rel Cass County v. PSC, 259 SW3d 544, 549-50 (Mo App 2008).

28. If a utility holding company segregates its operating entities by state, with each operating entity standing on its own, then the Commission would only be concerned with the operations of the Missouri operating entity (including of course affiliate transactions). But when a single utility entity chooses to conduct operations in Missouri and other states, it must expect scrutiny from all the involved states including this Commission.

29. The Commission recently authorized GMO to construct and operate a 3 MW solar plant with a relatively small cost and minimal ratepayer impact, after a careful examination of the necessity of the project. See File No. EA-2015-0256. The proposed rule on its face would require a utility that only provides service in Kansas to obtain Commission approval to build a plant in Missouri, whether small or large. Yet, according to the rule as proposed, a Missouri utility could build a billion dollar speculative plant several feet outside the Missouri state line without preapproval and without any examination of necessity or the Tartan factors applied by

the Commission in such matters,[5] as exemplified in the recent GMO small solar facility case. Nonetheless, the utility could later seek to include such a plant in rates after-the-fact. Such an approach would be directly contrary to the provisions and purposes of Section 393.170 as explained by the Missouri Courts.

30. The Commission has jurisdiction under Chapters 386 and 393 over a regulated electrical utility and its construction, acquisition, financing, and other activities, including such activities outside the state. These statutes make plain that major decisions of a utility are to be reviewed in advance, notwithstanding its general managerial discretion (that remains subject to after-the-fact review in ratemaking cases). Thus, under Section 393.170, the Commission has jurisdiction and responsibility to examine in advance any major activities, such as construction projects proposed by a Missouri utility in another state, to protect Missouri ratepayers. While such projects may also be examined by the regulatory commission in the other state, that is a product of the utility choosing to have multi-state activities under a single entity. But again, the FERC generally does not have authority over generation facilities. See 16 USC 824.

31. For purposes of pre-approval of construction, consideration should be given both to overall impact on the regulated utility and its ability to serve the public (i.e. prudence), as well as potential rate impacts on Missouri ratepayers. Even if the utility has no current plans to put a plant to be built in another state into its Missouri rate base, if the project is speculative or beyond the means of the utility it could nonetheless have a negative impact in this state.

32. Thus, by purporting to limit Commission review under Section 393.170 to electric generation plant built in Missouri, the proposed rule unlawfully fails to meet the full requirements of the statute, unlawfully ignores prior Court rulings, and unlawfully ignores the Commission's prior exercise of jurisdiction over plants outside the state. As made plain by the

[5] In the Matter of the Application of Tartan Energy Company, 3 MoPSC 3d 173, 177 (1994)

Courts, the Commission has authority to prevent imprudent projects at any location by regulated utilities operating in Missouri. The Courts rejected the idea that regulated utilities could be given "carte blanche authority to build wherever and whenever they wish". Under the statute, the Commission is not merely charged with examining utility site selections in Missouri locations. See State ex rel Cass County v. PSC, 259 SW3d 544, 549 (Mo App 2008); StopAcquila.org V. Aquila, Inc., 180 SW3d 24, 35-37 (Mo App 2005).

Additional Proposed Edits

33. Finally, there are a few additional aspects of the proposed amendments that could be fine-tuned. In subsection 1(B)2, the word "identify" in two places should be "identifies", and the last sentence should be deleted as duplicative of subsection 3. In subsection 1(B)6, the phrase "and/or being the projected process of identifying" seems out of place. The proposed rule does not address the two-year "use it or lose it" provision of Section 393.170 or the related concept of seeking approval only for imminent projects. The proposed rule also does not address the ability of the Commission to conclude that a project does not require its approval.

Conclusion

34. In **Exhibit A** attached hereto, Dogwood shows the changes to the proposed rule that it recommends for the reasons stated herein.

35. The proposed rule with the changes set forth in **Exhibit A** will eliminate the uncertainty that has apparently, at least until recently (in the past several years the number of applications for approval of regulated utility construction projects has dramatically increased), caused regulated utilities to refrain from seeking advance approval of major electric plant projects from the Commission. Further, the rule will require such companies to fully evaluate

alternatives and thereby provide the Commission with sufficient information in order to make a decision as to whether or not such projects are in the public interest.

WHEREFORE, Dogwood Energy LLC asks the Commission to incorporate its recommended changes as shown in **Exhibit A** attached hereto into the final new version of rule 4 CSR 240-3.105 and thereupon approve and publish such final rule, and for such other relief as the Commission deems meet and proper.

CURTIS, HEINZ,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served upon the parties listed below on this 29 day of April, 2016, by either e-mail or U.S. Mail, postage prepaid.

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EXHIBIT A TO COMMENTS OF DOGWOOD ENERGY
MO PSC CASE EX-2015-0225

Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

PROPOSED AMENDMENT

4 CSR 240-3.105 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity

PURPOSE: This amendment revises the filing requirements for applications, pursuant to Section 393.170 RSMo, which request that the commission grant a certificate of convenience and necessity to an electric utility operating in Missouri for either a service area or to construct ~~in Missouri~~ electric generating plants, electric transmission lines, substations, or gas transmission lines to facilitate the operation of electric generating plants.

PURPOSE: Applications to the commission, ***pursuant to section 393.170 RSMo,*** *requesting that the commission grant a certificate of convenience and necessity* ***to an electric utility with operations in Missouri for a service area or to construct ~~in Missouri~~ an electric generating plant, an electric transmission line, substation, or a gas transmission line to facilitate the operation of an electric generating plant,*** *must meet the requirements of this rule. As noted in the rule,[additional]* ***general*** *requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).* ***~~In Missouri, a~~ A certificate of convenience and necessity is needed to construct an electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area. A certificate of convenience and necessity is needed to construct an electric or gas transmission line and/or substation outside of the electric utility's certificated service area or solely to provide service to customers outside of that area. However, a separate certificate of convenience and necessity is not needed for the construction of an electric transmission or distribution line or substation or for the construction of a gas transmission line to facilitate the operation of an electric generating plant if the facility~~line(s)~~ to be constructed is(are) in the electric utility's certificated service area and to be used to serve customers within that area. Finally, this rule is not intended to replace or duplicate the electric utility resource planning requirements or procedures of 4 CSR 240-22.010 - .080.***

(1) In addition to the **general** requirements of **4 CSR 240-2.060(1), applications by** an electric utility operating in Missouri for a certificate of convenience and necessity, **pursuant to Section 393.170 RSMo,** shall include:

(A) If the application is for **authorization to provide electric service to retail customers in a new** service area **for the electric utility-**

1. A *[statement as to the same or similar utility service,]* **list of those entities providing regulated or** *[and]* nonregulated[available *in,]* **retail electric service in all or any part of** the **service** area *[requested]* **proposed, including a map that identifies where each entity is providing retail electric service within the area proposed;**

2. If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

3. The legal description of the **service** area to be certificated;

4. A plat **of the proposed service area** drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the Missouri Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

5. A feasibility study containing plans and specifications for the utility system and estimated cost of the construction of the utility system during the first three (3) years of construction; plans for financing; proposed rates and charges; and an estimate of the number of customers, revenues and expenses during the first three (3) years of operations[;].

(B) If the application is for **a certificate of convenience and necessity for the construction of electric generating plant(s),** electric[al] transmission line(s) or substations, **or** gas transmission line(s) *[or]* **to facilitate the operation of** electric[al *production facilities]* **generating plant(s)** ~~**in Missouri**~~ **—**

1. A description of the **proposed** route **or site** of construction and a list of all electric, **gas** and telephone **utility, conduit, wires, cables and** lines of regulated and nonregulated utilities, railroad tracks *[or any]* **and each** underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross **or come within 250 feet of;**

2. A description of [T]the plans and specifications for the complete **scope of the** construction project and estimated cost of the construction project *[or],* **which also**

clearly identifies the operating and other features of the electric generating plant(s), electric transmission line(s), substation(s), and gas transmission line(s) to facilitate the operation of the electric generating plant(s), when the construction is fully operational and used for service; the projected beginning of construction date and the anticipated fully operational and used for service date of each electric generating plant, each electric transmission line, each substation, and each gas transmission line to facilitate the operation of each electric generating plant for which the applicant is seeking the certificate of convenience and necessity; and identifiesidentify whether the construction project for which the certificate of convenience and necessity is being sought will include common electric generating plant, common electric transmission plant, or common gas transmission plant to facilitate the operation of the common electric generating plant, and if it does, then identifiesidentify the nature of the common plant. If this information is currently unavailable, then a statement of the reasons the information is currently unavailable and a date when it will be *[furnished]* filed;[and]

3. Plans for financing the construction of the electric generating plant(s), electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s);

4. An overview of plans for operating and maintaining the electric generating plant(s), electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s);

5. An overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of the electric generating plant(s), electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of the electric generating plant(s); and

6. The facts showing (a) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for entering into, and identifying, and/or being the projected process for identifying: the design, engineering, procurement, construction management, and construction contracts for the construction of electric generating plant(s), electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), and (b) the utilization of a non-discriminatory, fair, and reasonable competitive bidding process for purchased power capacity and energy from alternative suppliers, reviewed by the electric utility at an identified time(s) as a possible resource(s) in lieu of the construction of electric generating plant(s),

electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s).

(C) When no evidence of approval of the affected governmental bodies is necessary, a statement to that effect;

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise[, *or an affidavit of the applicant that consent has been acquired];* **when consent or franchise by a city that has all or part of its electrical or gas supply provided by a joint municipal utility commission, established pursuant to section 393.700 *et seq.,* RSMo is required, a certified copy of the joint municipal utility commission board resolution granting approval for such project; or a verified statement of the president and secretary of the corporation, showing that the applicant has received the required consent of the proper governmental bodies;** and

2. A certified copy of the required approval of other governmental agencies; and

(E) The facts showing that the granting of the application is *[required by the public convenience and necessity]* **necessary or convenient for the public service.**

(2) The term "construction," pursuant to section 393.170 RSMo:

(A) Includes construction ~~in Missouri~~ of new electric generating plant regardless of whether the site for the electric generating plant is inside or outside of the electric utility's certificated service area;

(B) Includes construction ~~in Missouri~~ of new electric transmission line(s), substation(s), or new gas transmission line(s) to facilitate the operation of electric generating plant(s) ~~in Missouri~~; however, a separate certificate of convenience and necessity is not needed for the construction of new electric transmission or distribution line(s), substation(s) or for the construction of new gas transmission line(s) to facilitate the operation of electric generating plant(s) if the facility~~line(s)~~ to be constructed is(are) in the electric utility's certificated service area and is (are) to be used to serve customers within that area;

(C) Includes substantial rebuild, renovation, improvement, retrofit and/or other construction ~~in Missouri~~ that will result in:

1. A substantial increase in the capacity of the electric generating plant beyond the planned capacity of the plant at the time the Commission granted the prior certificate of convenience and necessity for the electric generating plant; and/or

2. A material change in the discharges, emissions, or other environmental by-products of the electric generating plant than those projected at the time the prior certificate of convenience and necessity was granted by the commission for the electric generating plant;

(D) Includes, acquisition of full or partial ownership by purchase or capital lease, of electric generating plant(s) ~~in Missouri~~, whether the site for the electric generating plant(s) is inside or outside of the electric utility's certificated service area, and electric transmission line(s), substation(s), or gas transmission line(s) to facilitate the operation of electric generating plant(s), if the electric transmission line(s), substation(s) or gas transmission line(s) to facilitate the operation of electric generating plant(s) is(are) outside the electric utility's certificated service area or are to be used solely to serve customers outside that area ~~in Missouri~~;

(E) Does not include periodic, routine or preventative maintenance, or replacement of failed or near term projected failure of equipment or devices with the same or substantially similar items that are intended to restore the electric generating plant(s) to an operational state at or near a recently rated capacity level.

([2]**3**) If any of the items required under this rule **for the issuance of a certificate of convenience and necessity** are unavailable at the time the application is filed, **alternatively, as determined by the commission,** the[y] **unavailable items** shall *be[furnished]* **filed** prior to the granting of *[the]* authority *[sought]* **by the commission, or, the commission may grant the certificate subject to the condition that the unavailable items be filed before authority under the certificate is exercised.**

(4) The commission may by its order impose upon the issuance of a certificate of convenience and necessity such condition or conditions as it may deem reasonable and necessary.

(5) Unless exercised within a period of two years from the grant thereof, authority conferred by a certificate of convenience and necessity issued by the Commission pursuant to section 393.170 RSMo. and this rule shall be null and void. Upon submittal of competent proof, the Commission may confirm timely exercise of authority to eliminate any uncertainty.

(6) Upon application from an electric utility regarding a project that does not require approval under section 393.170 RSMo and this rule, the Commission may issue an order confirming lack of jurisdiction to eliminate any uncertainty.

*AUTHORITY: sections 386.250, 393.170 RSMo 2000. * Original rule filed Aug. 16, 2002, effective April 30, 2003. *Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993,* 1995, *1996; StopAquila.Org v. Aquila, Inc.,* 180 S.W.3d 24 (Mo.App. W.D. 2005); *State ex rel Cass County v, Public Serv. Comm'n,* 259 S.W.3d 544 (Mo.App. W.D. 2008); *State ex rel. Nadine v. Public Serv. Comm'n,* 343 S.W.2d 177 (Mo.App. K.C. 1960).

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: *This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.*

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Morris L. Woodruff Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before April 29, 2016, and should include a reference to Commission Case No. EX-2015-0225. Comments may also be submitted via a filing using the commission's electronic filing and information system at http://wwwpsc.mo.gov/efis.asp. A public hearing regarding this proposed amendment is scheduled for May 12, 2016, at 10:00 am, in Room 305 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.