

**BEFORE THE PUBLIC SERVICE COMMISSION OF  
THE STATE OF MISSOURI**

In the Matter of the Application of Union Electric                                 )  
Company d/b/a Ameren Missouri for Certificates of                                 )         File No. EA-2023-0286  
Convenience and Necessity for Solar Facilities.                                 )

**AMEREN MISSOURI’S RESPONSE IN OPPOSITION TO STAFF’S  
MOTION TO REQUIRE SUPPLEMENTAL DIRECT TESTIMONY**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and for its response in opposition to Staff’s above-referenced motion (“Staff’s Motion”), states as follows:

**Relevant Background**

1.       On June 16, 2023 – nearly four months prior to Staff’s filing of rebuttal testimony – the Company filed its Application in support of its request for certificates of convenience and necessity (“CCNs”) for the projects that are the subject of the Application. The Application was supported by direct testimony of four witnesses, who provided detailed information and analyses to support a finding that the projects were necessary or convenient for the public service per Section 393.170 (Cum. Supp. 2023), and that specifically addressed each of the Tartan Factors.<sup>1</sup> The Company promptly provided its direct case workpapers shortly after it filed this case and has since answered more than 200 data requests (“DRs”), many of which contain multiple subparts (double-digit subparts in numerous DRs).

2.       The Company’s Application (with references to direct testimony as appropriate) painstakingly addressed every single requirement of 20 CSR 4240-2.060 (general rule governing applications) and 20 CSR 4240-20.045 (the CCN rule) and did so separately for each of the four projects for which CCNs are sought in this docket. Staff’s rebuttal testimony does not claim

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<sup>1</sup> *Re Tartan Energy Co, L.c. dba Southern Missouri Gas Co.*, Report and Order, File No. GA-94-127 (Sept. 16, 1994), WL 762882 (Mo.P.S.C.)

otherwise.<sup>2</sup> As discussed in greater detail below, the Company also presented substantial and competent evidence that would support every single key finding of fact, conclusion of law, and decision the Commission made to approve a CCN for the Boomtown solar facility in File No. EA-2022-0286, and then some.<sup>3</sup>

3. On July 14 and again on August 25, 2023, the Company met in-person with Staff at the Commission’s offices in Technical Conferences, the purpose of which was to aid Staff in its review of the CCN requests in this case. The Company had itself taken the initiative to propose such technical conferences as part of its original filing on June 16, 2023 (in its Motion for Adoption of Procedural Schedule (EFIS Item No. 7)). Moreover, the Company additionally met in-person at the Commission’s offices with Staff on September 14, 2023, to provide Staff with a preview of its 2023 triennial Integrated Resource Plan (“IRP”).

4. On October 11, 2023, Staff filed rebuttal testimony from 14 witnesses consisting of several hundred pages. In some of those testimonies, Staff essentially claimed that, in its *opinion*, the Company’s direct case was lacking, claiming Staff lacked “necessary information required to evaluate and provide an appropriate recommendation.”<sup>4</sup> Staff did not point to any Commission rule, prior order, or any other source of authority to back-up its (subjective) claims

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<sup>2</sup> Staff witness Niemeier’s rebuttal testimony addresses the Company’s Application’s compliance with the applicable rules. Mr. Neimeier does suggest that utility crossing lists should have been provided for the Cass County, Illinois facility. However, Mr. Neimeier is incorrect as a matter of law as the subject rule provision specifically requires underground facility lists *as defined in Section 319.015, RSMo*. The statute provides definitions for *Missouri’s* One-Call requirements, none of which applies to an Illinois facility. Just as it did in its Application in File No. EA-2022-0245 (the Boomtown docket) the Company noted in its Application (which Staff has had since June 16, 2023) that the requirement was not applicable to a non-Missouri facility. Staff did not claim otherwise in File No. EA-2022-0245. Regardless, the underground facility list for the Cass County, Illinois facility was provided in response to a Staff DR sent to the Company on October 6, 2023 and submitted to Staff via EFIS just three days later (on October 9, 2023), prior to the filing of Staff’s rebuttal testimony.

<sup>3</sup> The Company in no way suggests that the Commission is required to approve the solar projects in this case just because it approved a CCN for the Boomtown facility. The Company has independently supported the current requests for CCNs but the point is that clearly the Company’s direct case in that case was more than sufficient and in the Commission’s view met both the Company’s burden of production and persuasion.

<sup>4</sup> James A. Busch Rebuttal Testimony, p. 3, l. 18-19.

that the Company's direct case was somehow lacking or deficient.

5. The apparent linchpin of Staff's claim that it lacks "necessary information" is the single-spaced laundry list of supplemental direct testimony requests reflected in Staff witness Sarah Lange's rebuttal testimony, which Staff cut and pasted into page 1 – 3 of Staff's Motion. The list is calculated to create the impression that a utility<sup>5</sup> must meet an evidentiary standard of *Staff's own concoction* (and newly minted for this case) to meet *Staff's formulation* (also newly minted) of what "necessary or convenient for the public service" means in Section 393.170, at least for a renewable generation facility.<sup>6</sup> Put another way, Staff erects a wall that it claims a utility seeking a CCN for renewable generation facilities must jump over in order to receive a CCN. Staff then claims that the Company's direct case doesn't manage to jump over Staff's newly-built wall, based wholly on Staff's concoction of what must be shown to establish that the public convenience and necessity warrants the Commission exercising its discretion and authority to approve a CCN. That Staff *alleges* the Company's case is deficient does not make it so.

6. Staff seeks two orders from the Commission. First, an order requiring that the Company file supplemental direct testimony<sup>7</sup> that will stack up high enough to comply with Staff's three pages of single-spaced demands, thus allowing the Company to hurdle Staff's wall. Second, if the Commission doesn't give Staff the first order it wants, Staff asks that the Commission amend the procedural schedule to allow for sur-replies to surrebuttal testimony that has not yet been filed.<sup>8</sup>

7. Staff's first request should be denied on the merits. Staff's second request is

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<sup>5</sup> At least for a renewable generation addition – the standard of proof called for by the list is to the Company's knowledge unprecedented in any other CCN case ever processed by the Commission.

<sup>6</sup> Staff's newly minted legal standard is primarily reflected in roughly 15 pages of "testimony" (pages 3 to 17) from Staff witness Sarah Lange, replete with Ms. Lange's "legal analysis" and citations to case law (and her *claims* of what it means).

<sup>7</sup> Motion, p. 5.

<sup>8</sup> *Id.*

obviously premature and should be denied on that basis given that the Commission obviously cannot judge whether any surrebuttal testimony would warrant allowing sur-surrebuttal based upon a claim that the testimony is not responsive to rebuttal (20 CSR 4240-2.130(7)(D)) until the Company files it, which won't happen until November 3.<sup>9</sup>

### **Argument**

8. There is no question but that Ameren Missouri bears the burden of proof in this case. In recognition of that burden, Ameren Missouri was required to file direct testimony (20 CSR 4240-2.130(7)(A)) and then under the Procedural Schedule adopted by the Commission, is allowed to close the pre-filed testimony phase of this case by filing surrebuttal testimony as to “material which is responsive to matters raised in another party’s rebuttal testimony (20 CSR 4240-2.130(7)(D)). If the evidence Ameren Missouri produces or adduces in the record of this case doesn’t in the Commission’s view meet that burden, then it would be the Commission’s right and duty to deny the relief requested in this docket. But Staff does not get to tell Ameren Missouri what evidence it should present in its direct case to support its Application, nor does Staff get to substitute its opinion for that of the Commission in deciding if that evidence (and other evidence, including surrebuttal according to the Commission’s rules and evidence adduced at the evidentiary hearing) warrants a Commission order approving the requested relief. Yet that is what Staff’s Motion purports to do.

9. Staff claims there are two reasons applications such as the Application pending in this case can be denied: [1] “on its procedural merits (i.e., deficiencies),” or [2] “on its substantive merits.” Specifically, Staff states: “There are at least two reasons for denying an application—one

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<sup>9</sup> The Company in no way concedes that any surrebuttal it files will be anything other than properly responsive to Staff’s rebuttal testimony, in accordance with the Commission’s rules but if Staff claims otherwise, it can make whatever filing it wants and sustain its burden to convince the Commission of its claims.

of which is by far the less satisfactory. The Commission can [1]<sup>10</sup> deny an application either on its procedural merits (i.e., deficiencies) because the Company did not give the Commission enough information on critical points to grant it; or [2] the Commission can deny it on its substantive merits because the Company gave the Commission enough information to do so. Of course, in the latter instance [2], the Commission is also, again happily, in a position to grant the application on its merits. It is self-evident that the second option is the way to do business and is by far the preferable.”<sup>11</sup>

10. With respect to Staff’s Point [1], there is not a shred of proof, or even an allegation,<sup>12</sup> that the Company’s Application and direct testimony did not meet every requirement of the Commission’s rules for filing and supporting a CCN case. An examination of the Company’s direct case demonstrates that the Company has provided substantial and competent evidence that supports all the findings, conclusions, and decisions (on need, on economic feasibility, on public interest, on the statutory necessary or convenient standard) that the Commission itself found and relied upon when it approved the Boomtown solar facility earlier this year.<sup>13</sup> In this case, the Company provided that evidence respecting the four facilities at issue in this case, based on specific facts as to each. And it did so in this case by presenting evidence of the state of and risks associated with the market and environmental regulation, and other facts and topics expressly found to be relevant and important to the Commission in the Boomtown case, using information, data, and facts existing as of the time it prepared its case (in the May/early June

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<sup>10</sup> Bracketed numbers are added to the quote from Staff’s Motion for clarity and ease of reference below.

<sup>11</sup> *Id.*

<sup>12</sup> Save the one incorrect and hyper-technical issue about crossing lists, which Staff has in any event – see Footnote 2 above.

<sup>13</sup> See Exhibit A attached hereto, which is the Commission’s *Report and Order* in File No. EA-2022-0244 (converted to Word and containing highlights of findings/conclusions/decisions). The Company’s direct case, if believed by the Commission, supports the conclusion that every single finding and conclusion of the Commission highlighted in Exhibit A respecting that facility and the need for it, its economic feasibility, and the fact that approving a CCN is in the public interest, is equally true as to each and every one of the facilities at issue in this case.

2023 timeframe). Indeed, the Company went well beyond the evidence it presented in the Boomtown case, including specifically respecting the needs the projects proposed in this case are designed to address – not completely by themselves as the Company is in the process of building a portfolio of new resources – but in part as the Company transitions from its old fleet to its new fleet. To point to just one example, see pages 33 to 45 of Mr. Michels’ direct testimony in this case.

11. If the Company’s case here is “deficient” then so too was its Boomtown case, and the Commission apparently was not able to decide Boomtown on the record before it (and by implication, made a mistake when it did so). The fallacy of Staff’s theory is obvious. The Company’s case in Boomtown was not deficient and provided no basis for a denial on the “procedural merits” in that case, nor does its case here warrant a denial on the “procedural merits,” whatever that means.<sup>14</sup>

12. With respect to Point [2], Staff’s contention makes no sense. Staff says the second way to deny an application is on substantive grounds: “[2] the Commission can *deny* it [an application] on its substantive merits because the Company gave the Commission enough information to do so.”<sup>15</sup> But then having made that statement, Staff goes onto say that “in the latter instance [that is, Point [2], which it labels as a substantive denial], the Commission is “happily ... in a position to *grant* the application on its own merits,” going on to say that the second option [Point 2, substantive denial] is “by far preferable.”<sup>16</sup>

13. As noted, none of that makes any sense so, did Staff simply make a mistake, did

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<sup>14</sup> The phrase “procedural merits” is a non-sequitur. A case might be procedurally deficient (e.g., did not follow applicable rules as to content, was filed out-of-time according to an applicable rule or statute), or it might be deficient on the merits (e.g., the evidence was insufficient to carry the proponent’s burden of convincing the decisionmaker under the preponderance of the evidence standard). Or it could be deficient procedurally, *and* on the merits, but there is no such thing as a “procedural merit” (or lack thereof).

<sup>15</sup> Staff Motion, p. 4 (emphasis added).

<sup>16</sup> *Id* (emphasis added).

Staff mean to say “[2] the Commission can *grant* it [the application] on its own substantive merits because the Company gave the Commission enough information to do so” and that this lets the Commission “happily” grant it? But that doesn’t make any sense either because the entire paragraph is outlining two ways for the Commission to *deny* an application (“There are at least two reasons for *denying* an application....”<sup>17</sup>)

### **Conclusion**

14. As to Staff’s first request for relief – a mandate that more direct testimony be filed - the Company filed the case it filed, makes no apologies for having done so, and stands by its contention that it reflects substantial and competent evidence that allows the Commission to decide, based upon its own assessment and judgment about the evidence of record, whether CCNs should be granted for the facilities at issue in this case. Absent adoption *by the Commission* of Staff’s posited new standards of proof and new claims as to what “necessary or convenient for the public service” means in a renewable generation CCN case, absent now requiring utilities to hurdle the high evidentiary wall Staff is proposing for the first time in this case, there is no reasonable question but that the Company’s direct case would support all of the Commission’s key findings/conclusions made by the decision in the Boomtown case. And if that is true, the Commission can, if it so chooses, grant the requested CCNs; otherwise, it can deny them.

15. With respect to Staff’s second request for relief – an amendment of the procedural schedule to allow sur-surrebuttal testimony to surrebuttal testimony that has not even been filed – the Commission is in no position to entertain such a request at this time. If Staff contends the Company’s surrebuttal testimony once it is filed violates the Commission’s rules, it can so state and consistent with the Company’s Due Process rights, the Company will respond. But there is

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<sup>17</sup> *Id.*

nothing upon which the Commission can or should rule respecting an amended procedural schedule or additional testimony at this time.

**WHEREFORE**, the Company respectfully requests that the Commission make and enter its order denying Staff's Motion.

Respectfully Submitted,

*/s/ James B. Lowery*

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**ATTORNEYS FOR UNION ELECTRIC  
COMPANY d/b/a AMEREN MISSOURI**

Dated: October 24, 2023



**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing was served on counsel for all parties of record in this docket via electronic mail (e-mail) on this 24th day of October, 2023.

**/s/ James B. Lowery**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Union )  
Electric Company d/b/a Ameren Missouri ) for  
a Certificate of Convenience and ) **File No. EA-2022-0245**  
Necessity for a Solar Facility, Approval of a ) Tracking No. YE-2023-0010  
Subscription-Based Renewable Energy )  
Program, and Authorization to Establish )  
Tracking Mechanism )

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**REPORT AND ORDER**

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**Issue Date: April 12, 2023**

**Effective Date: April 22, 2023**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union )  
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Program, and Authorization to Establish )  
Tracking Mechanism )

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**REGULATORY LAW JUDGE:** Kenneth J. Seyer

## REPORT AND ORDER

### I. Procedural History

On July 14, 2022, Union Electric Company d/b/a Ameren Missouri (“the Company”) filed an application with the Commission seeking an order granting a Certificate of Convenience and Necessity (CCN). The CCN would authorize Ameren Missouri to construct, install, own, operate, maintain, and otherwise control and manage a 150 megawatt (MW) solar generation facility, located in White County, Illinois (referred to as the “Boomtown Solar Project” or “Project”) pursuant to a Build Transfer Agreement (BTA) with Boomtown Solar Holdings LLC.

In its application, the Company also asked for approval of a new subscription-based renewable energy program for commercial, industrial, and governmental customers, called the Renewable Solutions Program (RSP). Tariff sheets to implement the RSP, Tracking No. YE-2023-0010, bearing an effective date of May 1, 2023, were filed on July 14, 2022.

Renew Missouri Advocates d/b/a Renew Missouri, Sierra Club, Walmart, Inc., and Missouri Industrial Energy Consumers (MIEC) were granted intervention. The Commission ordered a procedural schedule. A hearing was set and written direct, supplemental direct, rebuttal, and surrebuttal testimony were filed.

The evidentiary hearing in this matter was held February 6-7, 2023. During the evidentiary hearing, the parties presented evidence relating to the following issues identified by the parties:

- 1. Does the evidence establish that the Boomtown Solar Project is necessary or convenient for the public service? Should the Commission find that the Project satisfies the five *Tartan* factors?**

**2. If the Commission grants the CCN for the Boomtown Solar Project, what conditions if any, should the Commission impose on the CCN?**

**3. Is this an appropriate proceeding for the Commission to review Ameren Missouri's Renewable Solutions Program (RSP)? If so, should the Commission approve the RSP proposed by Ameren Missouri in accordance with its authority to approve utility programs and tariffs?**

**4. If the Commission approves the Renewable Solutions Program (RSP) proposed by Ameren Missouri, what, if any, conditions should the Commission impose on such approval?**

Initial post-hearing briefs were filed on March 3, 2023, and reply briefs were filed March 17-18, 2023.

The Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Union Electric Company is a Missouri corporation doing business under the fictitious name of Ameren Missouri, with its principal office and place of business located at One Ameren Plaza, 1901 Chouteau Ave., St. Louis, Missouri 63103.<sup>1</sup> The Company is engaged in providing electric utility services under the jurisdiction of the Commission.<sup>2</sup>

2. Ameren Missouri currently provides electric utility service to approximately 1.2 million customers in Missouri.<sup>3</sup> The Company has approximately 10,800 MW of

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<sup>1</sup> File No. EA-2022-0245, *Application*, (filed July 14, 2022) ("Application"), p. 3.

<sup>2</sup> Application, p. 3; Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

<sup>3</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

generation capacity in operation, including solar, wind, hydro-electric, fossil, and nuclear technologies.<sup>4</sup>

3. The Office of the Public Counsel (OPC) is a party to this case pursuant to Section 386.710(2), RSMo,<sup>5</sup> and by Commission Rule 20 CSR 4240-2.010(10).

4. Staff is a party in all Commission investigations, contested cases, and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>6</sup> Staff participated in this proceeding.

5. Renew Missouri, Sierra Club, Walmart, Inc., and MIEC are parties after being granted intervention.<sup>7</sup>

6. MIEC is a non-profit company that represents the interests of industrial consumers in Missouri utility matters.<sup>8</sup> MIEC supports the granting by the Commission of a CCN for the Project.<sup>9</sup>

7. Sierra Club recommends that the Commission grant a CCN for the Project arguing that the Project economically meets Ameren Missouri's energy needs, reduces the risk of market energy and fossil fuel price volatility, and diversifies the Company's generation fleet.<sup>10</sup>

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<sup>4</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 2.

<sup>5</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

<sup>6</sup> Commission Rules 20 CSR 4240-2.010(10) and (21) and 2.040(1).

<sup>7</sup> File No. EA-2022-0245, *Order Granting Applications to Intervene* (issued Aug. 30, 2022); *Order Granting Intervention* (issued Nov. 2, 2022).

<sup>8</sup> Exh. 300, *Brubaker Direct Testimony*, p. 1.

<sup>9</sup> Exh. 300, *Brubaker Direct Testimony*, p. 3.

<sup>10</sup> Exh. 500, *Shenstone-Harris Surrebuttal Testimony*, p. 7.

8. Renew Missouri Advocates d/b/a Renew Missouri advocates for energy efficiency and renewable energy policy.<sup>11</sup> Renew Missouri recommends that the Commission grant a CCN for the Project.<sup>12</sup>

9. Walmart, Inc. has 52 stores and related facilities and one distribution center in Missouri that take electric service from Ameren Missouri. Walmart primarily receives service under the 3 (M) Large General Service class.<sup>13</sup> Walmart supports approval of the RSP.<sup>14</sup>

10. The Inflation Reduction Act (IRA) was passed into law August 16, 2022.<sup>15</sup>

#### **Boomtown Solar Project**

11. In August of 2020, Ameren Missouri issued a request for proposals (RFP) for solar and wind generation projects that could begin producing energy during the period of 2022-2024 and under which the Company could acquire the solar or wind project companies through a BTA.<sup>16</sup> In response to the RFP, 16 bidders submitted 51 project proposals with an aggregate capacity of approximately 9,000 MW.<sup>17</sup> The Boomtown Solar Project resulting from the RFP process would be an addition to Ameren Missouri's generation portfolio.<sup>18</sup>

12. Under a BTA structure, a solar developer builds the project, but the ultimate owner has contractual rights both before and during construction to ensure that the project

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<sup>11</sup> Exh. 600, *Owen Surrebuttal Testimony*, p. 3.

<sup>12</sup> Exh. 600, *Owen Surrebuttal Testimony*, p. 4.

<sup>13</sup> Exh. 400, *Teague Rebuttal Testimony*, p. 2.

<sup>14</sup> Exh. 400, *Teague Rebuttal Testimony*, p. 10.

<sup>15</sup> Inflation Reduction Act of 2022 Pub. L. 117-169 (Aug. 16, 2022).

<sup>16</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 11.

<sup>17</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 11.

<sup>18</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 3.



is built to the ultimate owner's specifications and will otherwise meet the ultimate owner's needs.<sup>19</sup>

13. Pursuant to a BTA, the Project is being developed by Invenergy Renewables LLC (Invenergy) through a special purpose entity known as Boomtown Solar Energy LLC, a wholly-owned subsidiary of Boomtown Solar Holdings LLC.<sup>20</sup> Invenergy is a well-established renewable generation developer with over 24 gigawatts of wind and solar projects under operation, construction, or contract.<sup>21</sup>

14. The Project is a 150 MW photovoltaic solar-powered electric generating facility located in White County, Illinois anticipated to interconnect into the Midcontinent Independent System Operator, Inc. (MISO).<sup>22</sup>

15. The solar panels installed as part of the facility have a 30-year useful life<sup>23</sup> with a 0.5% degradation of generating capacity per year.<sup>24</sup>

16. After the Project is developed by Invenergy, Ameren Missouri will ultimately acquire it.<sup>25</sup>

17. Staff's position is that Boomtown Solar Energy LLC is qualified to construct and install the Project, and that Ameren Missouri is qualified to own, maintain, and otherwise control and manage the Project.<sup>26</sup> OPC's position is that Ameren Missouri is qualified to build, own, operate, and maintain the Project.<sup>27</sup>

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<sup>19</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 5.

<sup>20</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4; Schedule SW-D1, p. 1.

<sup>21</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4.

<sup>22</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, Schedule SW-D1, p. 1.

<sup>23</sup> Exh. 12, *Wills Surrebuttal Testimony*, p. 15.

<sup>24</sup> Tr. 174 (Forsberg).

<sup>25</sup> Exh. 10, *Wibbenmeyer Direct Testimony*, p. 4.

<sup>26</sup> Exh. 103, *Hull Rebuttal Testimony*, p. 3.

<sup>27</sup> Exh. 200, *Marke Rebuttal Testimony*, p. 3.

18. Both Staff and OPC agree that Ameren Missouri has the financial ability to construct, operate, and maintain the Project.<sup>28</sup>

#### **Preferred Resource Plan**

19. Ameren Missouri filed a 2020 Preferred Resource Plan (PRP) in its Triennial Integrated Resource Plan (IRP).<sup>29</sup> On June 22, 2022, the Company filed a change in the PRP (hereafter the “2022 PRP”).<sup>30</sup> The 2022 PRP includes the addition of 5,400 MW of wind and solar generation resources (including 700 MW of wind resources added in 2020-2021); the retirement of all coal-fired generation by 2042, including retirement of the Rush Island Energy Center by the end of 2025 and the Sioux Energy Center in 2030; and the addition of 1,200 MW of natural gas-fired combined cycle generation in 2031.<sup>31</sup>

20. Ameren Missouri sells all of the energy that it generates into the MISO grid and then purchases from MISO the energy it needs to meet its load.<sup>32</sup> Historically, the Company has annually generated more electricity than is required to meet its customers’ load (at times, in excess of 10 million megawatt hours annually), allowing it to sell the excess generation to MISO and pass those revenues on to its ratepayers in the form of reduced rates.<sup>33</sup> Like Ameren Missouri, MISO has also historically maintained a positive buffer – that is, its members, as a group, have generated electricity beyond what its members’ customers have used each year. However, like Ameren Missouri, other MISO

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<sup>28</sup> Exh. 107, *Won Rebuttal Testimony*, p. 3-4; Exh. 200, *Marke Rebuttal Testimony*, p. 3.

<sup>29</sup> Exh. 2, *Michels Direct Testimony*, Sch. MM-D2, p. 1, fn 1 (citing to File No. EO-2021-0021, *In the Matter of Union Electric Company d/b/a Ameren Missouri’s 2020 Utility Resource Filing Pursuant to 20 CSR 4240 – Chapter 22*).

<sup>30</sup> Exh. 3, Schedule MM-D2. File No. EO-2022-0362, *Notice of Change in Preferred Resource Plan*, filed June 22, 2022.

<sup>31</sup> Exh. 3, *Michels Direct Testimony*, pp. 4-5.

<sup>32</sup> Exh. 106, *Stahlman Rebuttal Testimony*, p. 2; Tr. 517 (Luebbert).

<sup>33</sup> Exh. 4, *Michels Surrebuttal Testimony*, p. 11.

members are also transitioning from dispatchable fossil-fuel resources to a much greater reliance on renewable resources.<sup>34</sup> Therefore, relying on the MISO market during peak system load periods becomes a riskier proposition than in the past.<sup>35</sup>

21. When it comes to resource adequacy, the North American Reliability Corporation's (NERC's) 2022 Long-Term Reliability Assessment classifies MISO as a "high-risk" area, where "shortfalls may occur at normal peak conditions."<sup>36</sup> The report assesses MISO's anticipated capacity reserves as "alarmingly low," possibly falling below an acceptable level as soon as the summer of 2023.<sup>37</sup> If Ameren Missouri is able to execute its PRP, which includes the Project, it should have sufficient resources every year long-term and the Company would be expected to be a net seller of electric energy at levels roughly equivalent to what it has seen historically.<sup>38</sup>

22. Ameren Missouri has determined that new renewable generation is the most affordable energy resource to replace retiring coal-fired generation plants.<sup>39</sup>

23. The 2022 PRP produces the lowest net present value of revenue requirement (NPVRR) among the alternative resource plans considered by Ameren Missouri across a range of scenarios.<sup>40</sup> The 2022 PRP -- which includes the Project, along with other future renewable energy additions, energy storage systems, and the natural gas-fired combined cycle plant -- is projected by the Company to meet the needs

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<sup>34</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 9.

<sup>35</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 9; Exh. 4 *Michels Surrebuttal Testimony*, pp. 13-14.

<sup>36</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 11.

<sup>37</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 9.

<sup>38</sup> Exh. 3, *Michels Surrebuttal Testimony*, p.11, 15.

<sup>39</sup> Exh.1, *Arora Direct Testimony*, p. 5.

<sup>40</sup> Exh. 2, *Michels Direct Testimony*, Sch. MM-D2, p. 27.

of its customers at an NPVRR that is over \$600 million lower than if the Company replaces fossil-fuel generation capacity as each existing fossil-fuel generation plant is retired.<sup>41</sup>

24. 13.The Project will support Ameren Missouri's plan to transition its generation fleet from aging coal-fired generation to clean energy resources, with significantly greater reliance of renewable energy resources.<sup>42</sup>

25. Successful renewable energy projects take five to eight years to reach commercial operation.<sup>43</sup> Among other risks to successfully developing a renewable energy project, Ameren Missouri loses good projects due to constructability issues or competition from large technology firms outside of the Company's service area for the best available renewable projects.<sup>44</sup>

26. The U.S. Environmental Protection Agency has published proposed revisions to the Cross-State Air Pollution Rule that focus on ozone season emissions. If implemented, the rule could potentially limit the generation of Ameren Missouri's coal-fired units during the summer months, absent investment in expensive pollution control equipment. Significant generation from solar resources, such as the Project, during the summer months would provide a large measure of mitigation.<sup>45</sup>

27. Ameren Missouri will have a need for winter capacity in 2026 that it has determined can be met with new solar resources, which are assumed to provide reliable capacity of 11% of rated output during the winter season.<sup>46</sup>

**Commented [JL1]:** The facts have slightly changed quantitatively in the current case but Ameren Missouri has provided direct testimony on that point

<sup>41</sup> Exh 4, *Michels Surrebuttal Testimony*, p. 27.

<sup>42</sup> Exh.1, *Arora Direct Testimony*, p. 3.

<sup>43</sup> Exh. 1, *Arora Direct Testimony*, p. 14.

<sup>44</sup> Exh. 2, *Arora Surrebuttal Testimony*, pp. 24-25.

<sup>45</sup> Exh. 3, *Michels Direct Testimony*, p. 15.

<sup>46</sup> Exh. 3, *Michels Direct Testimony*, p. 14.

28. Under Ameren Missouri's 2022 PRP, the Company is planning to add the amount of new capacity resources that are necessary to meet its capacity resources in all seasons. The Company's summer generating capacity position will be above what is anticipated to meet load and reserve margin requirements in all years, but those resource additions are necessary to ensure reliability in the winter season. Under the 2022 PRP, the summer capacity position is anticipated to be less than 500 MW of capacity beyond load and reserve margin requirements by 2040. In the meantime, the Company can sell excess capacity into the MISO market and use those revenues to reduce costs to customers.<sup>47</sup>

**Commented [JL2]:** The facts have slightly changed quantitatively in the current case but Ameren Missouri has provided direct testimony on that point

29. Waiting to add renewable resources could result in Ameren Missouri falling short of meeting energy needs or requiring the rapid deployment of less beneficial resources, particularly if viable renewable energy projects are limited, transmission constraints cause delays or higher costs, or financing rates are higher in the future when transitioning from fossil-fuel generation.<sup>48</sup>

30. Analysis by Ameren Missouri of its peak days for each summer and winter month from 2019 through 2021 showed that, without the coal-fired Meramec Energy Center (retired at the end of 2022) and Rush Island Energy Center (scheduled for retirement by the end of 2025), the Company would have had to purchase more energy than it generated to serve its native load.<sup>49</sup> On four of the 18 peak days, the estimated added costs to purchase the needed energy to serve its native load would have been

<sup>47</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 14-15; Exh. 3, *Michels Direct Testimony*, p. 17.

<sup>48</sup> Exh. 4, *Michels Surrebuttal Testimony*, p. 39.

<sup>49</sup> Exh. 4, *Michels Surrebuttal Testimony*, p. 40-41.

over \$1 million for each of those four days, with one peak day in February of 2021 (during Winter Storm Uri) estimated at over \$9 million for that day alone.<sup>50</sup>

31. Legislative changes considered by the U.S. Congress in the last two years could significantly change energy policy and “drive the need for an imminent and significant expansion of renewable energy resources within an uncomfortably short timeframe.”<sup>51</sup>

### **PISA**

32. The Plant-in-Service Accounting (PISA) mechanism allows investor-owned utilities in Missouri the option of deferring 85% of all depreciation expense and return associated with qualifying electric plant that was recorded to plant-in-service as a regulatory asset on or after the date the utility elects the PISA option. Qualifying plant for the purposes of the PISA deferral are all rate base additions that are not new nuclear, coal, or gas-fired generation or investment for new services.<sup>52</sup>

33. Ameren Missouri intends to utilize PISA for the Project. The Project is not required for Renewable Energy Standard (RES) compliance, so no costs or revenues of the Project will be included in the Renewable Energy Standard Rate Adjustment Mechanism (RESRAM).<sup>53</sup>

### **Tax Credit Programs**

34. Using federal investment tax credits (ITCs), 30% of project costs may be claimed as a credit against income.<sup>54</sup>

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<sup>50</sup> Exh. 4, *Michels Surrebuttal Testimony*, p. 41.

<sup>51</sup> Exh. 3, *Michels Direct Testimony*, p. 18.

<sup>52</sup> Exh. 101, *Dhority Rebuttal Testimony*, p. 4.

<sup>53</sup> Exh. 101, *Dhority Rebuttal Testimony*, pp. 4-5.

<sup>54</sup> Tr. 167 (Forsberg).

35. The federal production tax credits (PTCs) are a credit against income per kilowatt hour generated.<sup>55</sup>

36. Ameren Missouri originally planned to utilize, and requested approval for, a tax equity partnership to take advantage of ITCs to help finance the Project.<sup>56</sup> However, in a notice filed on November 8, 2022,<sup>57</sup> and revised on November 14, 2023, the Company informed the Commission that it would no longer utilize ITCs and tax equity financing because utilizing PTCs authorized under the federal IRA would be more favorable for its customers.<sup>58</sup>

37. On January 18, 2023, Ameren Missouri filed testimony stating Ameren Missouri's current expectation is that the Project will be located in an "energy community," under the IRA, which would boost the ITC from 30% to 40% and would increase the PTC rates by 10% each year.<sup>59</sup> The testimony also adjusted the expected project cost upward by approximately 30%. These two factors have altered the Company's position to a state of uncertainty as to whether they will ultimately use PTCs, ITCs with a transfer of the tax credits, or ITCs with tax equity financing in connection with the Project.<sup>60</sup> If the Company decides to utilize tax equity financing, it would request authority for such financing in a future, separate proceeding.<sup>61</sup>

### **Proposed Conditions**

38. Staff recommends the Commission not grant the CCN, but if the Commission decides to grant the CCN, Staff suggests the following conditions:

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<sup>55</sup> Tr. 168 (Forsberg).

<sup>56</sup> Application, pp. 2, 18.

<sup>57</sup> File No. EA-2022-0245, *Notice Regarding Impact of the Inflation Reduction Act on Relief Sought*.

<sup>58</sup> File No. EA-2022-0245, *Revised Notice Regarding Impact of the Inflation Reduction Act on Relief Sought*.

<sup>59</sup> Exh. 9, *Forsberg Surrebuttal Testimony*, pp. 2-3.

<sup>60</sup> Tr. 166 (Forsberg).

<sup>61</sup> Exh. 9, *Forsberg Surrebuttal Testimony*, pp. 2-3.

- a. Ameren Missouri shall specifically delineate within each FERC account, with unique general ledger coding and/or record into sub-accounts, all revenues, investments, and expenses associated with the Boomtown Solar Project. The specific delineation of the Project should also include a reasonable allocation of the items related to the Project in which the amount is indirectly attributable to the Project. The unique recording for these items is to be available for Staff's review during future Ameren Missouri general rate cases.
- b. Ameren Missouri shall use sound engineering judgment and commercially reasonable efforts to meet the IEEE standard P2800 for the Project and future transmission interconnected solar projects.
- c. Ameren Missouri shall accept that the in-service criteria contained in Confidential Attachment SEL-3 and Confidential Attachment SEL-4 to Staff Witness Shawn E. Lange's rebuttal testimony are appropriate for use in a future case to determine whether the Project is in-service.
- d. Ameren Missouri shall notify the Commission and provide an updated economic analysis if the upgrade cost exceeds those outlined in the Generator Interconnection Agreement (GIA) by more than 15%.
- e. Ameren Missouri shall file with the Commission all as-built drawings for the project no later than 60 days after the site is commercially operational.
- f. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.
- g. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.
- h. Ratepayers that do not participate in the Renewable Solutions Program shall be held harmless during any rate review period if the costs of the Project exceed the revenues from the facility

39. OPC recommends not granting the CCN, but If the Commission decides to grant the CCN, OPC recommends the following conditions:

- a. Proper utility-scale solar conservation habitat practices.
- b. Appropriate storm water run-off management plans.



- c. Solar panel selections not sourced from Chinese forced Uyghur labor camps.
- d. Plans covering end-of-life solar panel waste management considerations.

40. Ameren Missouri agreed that imposition of four of the conditions, with an unopposed modification to a fifth condition, was acceptable to the Company.<sup>62</sup>

#### **Other Project Benefits**

41. Access to renewable energy generation is increasingly vital to a region's competitive economic development.<sup>63</sup> Offering its larger customers an option to purchase renewable energy is one way for Ameren Missouri to help prevent these customers from leaving, or seeking to expand outside, the Ameren Missouri service territory.<sup>64</sup>

42. Surveys in the latest edition of a prominent economic development trade publication showed that 74% of corporate respondents indicated that access to renewable resources was either very or somewhat important to their company, and 91% of site consultant respondents indicated that access to renewable energy resources was either very or somewhat important to their clients' location decisions.<sup>65</sup> Real business investment decisions are being made based on renewable energy access, and states that can provide access to renewables are succeeding in some of the largest economic development opportunities in the country.<sup>66</sup>

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<sup>62</sup> File No. EA-2022-0245, *Ameren Missouri's Statement of Positions*, pp.7-8 (filed Jan. 27, 2023); *Post-Hearing Brief of Union Electric Company, dba Ameren Missouri*, pp. 36-37 (filed Mar. 3, 2023); Exh. 14, *Arora Surrebuttal Correction*.

<sup>63</sup> Exh. 6, *Dixon Surrebuttal Testimony*, p. 12.

<sup>64</sup> Exh. 7, *Forsberg Direct Testimony*, p. 6.

<sup>65</sup> Exh. 6, *Dixon Surrebuttal Testimony*, pp. 12-13.

<sup>66</sup> Exh. 6, *Dixon Surrebuttal Testimony*, p. 14

43. Solar and wind generation are dependent on weather conditions, which vary by geographic location.<sup>67</sup> Although Ameren Missouri anticipates having the majority of its future solar generation in Missouri, the Project would be located in Southern Illinois.<sup>68</sup> If Missouri is cloud covered, but Southern Illinois is sunny, the Boomtown Solar facility would be producing power, aiding the Company's reliability of service via geographical diversity.<sup>69</sup>

44. Solar generation produces no emissions of carbon dioxide.<sup>70</sup> The Project supports Ameren Missouri's goal of net zero carbon emissions by 2045, with reductions in carbon emissions of at least 60% by 2030 and 85% by 2040, compared to 2005 levels.<sup>71</sup> Many of the Company's large customers have similar goals.<sup>72</sup>

45. Renewable generating resources, such as the Project, are insulated from the price volatility risks associated with fossil-fuel generation because they do not require any fuel to operate. Once installed, these resources rely on free solar or wind resources to produce electricity.<sup>73</sup>

46. The large-scale expansion of renewable resources, such as the Project, provides significant risk mitigation to Ameren Missouri's generation portfolio, particularly with respect to the potential for additional environmental regulations, changes in climate policy and carbon dioxide prices, and other factors that may significantly affect the operating costs and benefits of the Company's existing coal-fired resources.<sup>74</sup>

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<sup>67</sup> Exh. 1, *Arora Direct Testimony*, p. 13.

<sup>68</sup> Tr. 97 (Arora).

<sup>69</sup> Tr. 97-98 (Arora).

<sup>70</sup> Exh. 3, *Michels Direct Testimony*, p. 3.

<sup>71</sup> Exh. 3, *Michels Direct Testimony*, p. 3.

<sup>72</sup> Exh. 400, *Teague Rebuttal Testimony*, p. 3; Exh. 300, *Brubaker Rebuttal Testimony*, p. 3.

<sup>73</sup> Exh. 2, *Arora Surrebuttal Testimony*, p. 15; Tr. 175 (Forsberg).

<sup>74</sup> Exh. 3, *Michels Direct Testimony*, p. 3.

## Renewable Solutions Program

47. Ameren Missouri has requested approval of tariff sheets establishing a subscription-based renewable energy program – the Renewable Solutions Program (RSP). The RSP would be a voluntary renewable energy purchasing program for large commercial and industrial customers and government accounts.<sup>75</sup> Phase 1 of the program would be supported by the Boomtown Solar Project.<sup>76</sup>

48. OPC suggests that the Company's pending electric rate case, File No. ER-2022-0337, is a "better venue" for review of the RSP because the cost of service data used to establish the Renewable Benefits Credit is expected to be updated in the pending rate case.<sup>77</sup>

49. After the Project costs increased, the combined Project and RSP are only estimated to provide approximately \$6.8 million of net cost on a net present value basis for all Ameren Missouri customers over a 30-year period, derived primarily from the competitive economics of the Project and expected net contributions to the Project costs made by subscribing customers.<sup>78</sup>

50. The RSP is proposed to include multiple phases and multiple resource types. Because there is no specific identified project, the RSP can include wind as well as solar.<sup>79</sup> Each additional phase will have a separate rate schedule that will require Commission approval.<sup>80</sup>

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<sup>75</sup> Exh. 11, *Wills Direct Testimony*, p. 2.

<sup>76</sup> Exh. 7, *Forsberg Direct Testimony*, p. 3.

<sup>77</sup> Exh. 200, *Marke Direct Testimony*, p. 9.

<sup>78</sup> Exh. 7, *Forsberg Direct Testimony*, p. 3; Exh. 9, *Forsberg Surrebuttal Testimony*, p. 2 and 4-5; Transcript p. 189-188.

<sup>79</sup> Exh. 7, *Forsberg Direct Testimony*, p. 8.

<sup>80</sup> Rider RSP, Original Sheet No. 83.6.

51. Ameren Missouri has experience with a previously approved renewable energy subscription program (Renewable Choice) designed to give large commercial and industrial customers an option to voluntarily subscribe to receive up to 100% of their annual usage from a new wind resource to be developed for the program. Subscribers would pay a per-kilowatt-hour (kWh) charge for their share of all resource output and would receive a per-kWh credit based on the market revenues realized from injecting that energy into regional wholesale energy markets.<sup>81</sup>

52. The Renewable Choice program has not resulted in any renewable projects or subscribers since its approval. Ameren Missouri identified a couple of design flaws in Renewable Choice, including that the subscription process relied on non-binding customer commitments as the basis for the development of a specific program resource creating uncertainty and a significant risk of unsubscribed capacity being built.<sup>82</sup> The second design flaw of Renewable Choice is that the pricing was derived from the market prices applicable to the energy produced by the program resource. Potential subscribers indicated they preferred program subscriptions not tied directly to market prices.<sup>83</sup>

53. The RSP was designed to fix these previous design flaws. First, the Company started with its Integrated Resource Plan (IRP). The resources to be constructed for the RSP are resources that are needed to execute Ameren Missouri's transition to a greater reliance on renewable energy generation as outlined in its 2022 PRP.<sup>84</sup> Second, the RSP uses firm customer demand under binding contracts.<sup>85</sup>

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<sup>81</sup> Exh. 11, *Wills Direct Testimony*, p. 3.

<sup>82</sup> Exh. 11, *Wills Direct Testimony*, p. 4-5.

<sup>83</sup> Exh. 11, *Wills Direct Testimony*, p. 5.

<sup>84</sup> Exh. 11, *Wills Direct Testimony*, p. 4-5.

<sup>85</sup> Exh. 11, *Wills Direct Testimony*, p. 5.

54. Renewable Solutions will be available to customers served under the Company's existing service classifications 3(M) – Large General Service, 4(M) – Small Primary Service, and 11(M) – Large Primary Service, and is designed as a rider that sits on top of the existing base rate structure of those tariffs. Customers that choose to subscribe to the RSP will still be subject to all of the charges associated with those base rate tariffs. The RSP features a charge and a credit that will be added to the bill on top of those existing charges.<sup>86</sup>

55. The charge for the program, called the Renewable Resource Charge, is structured as a monthly capacity charge that is calculated using a rate that is stated as dollars per kilowatt (kW) of program capacity dedicated to the subscribing customer.<sup>87</sup> Because the amount of such capacity is fixed contractually at the time the customer enrolls, this capacity charge essentially becomes a fixed monthly program charge, customized for each subscriber, for the entire term of the customer's subscription.<sup>88</sup>

56. The fixed charge escalates annually at 2.5% over the term of the RSP, but is defined up front for all program years for each phase of the program, creating a predictable price for subscribers and a predictable revenue stream to cover costs of program resources.<sup>89</sup>

57. A monthly Renewable Benefits Credit (RBC) based on the actual amount of renewable energy generated by the subscriber's share of the RSP generation resources'

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<sup>86</sup> Exh. 11, *Wills Direct Testimony*, p. 6.

<sup>87</sup> Exh. 11, *Wills Direct Testimony*, p. 6.

<sup>88</sup> Exh. 11, *Wills Direct Testimony*, p. 6-7.

<sup>89</sup> Exh. 11, *Wills Direct Testimony*, p. 6-7 and 16.

capacity for each month is deducted from the customer's bill.<sup>90</sup> Because RSP subscribers are still paying their underlying tariff charges, the RBC prevents them from effectively paying twice towards the costs of different generating resources.<sup>91</sup>

58. The RBC is based on the avoided cost of non-RSP resources.<sup>92</sup> This cost was established using the class cost of service study, from the last rate review, File No. ER-2021-0240.<sup>93</sup> The numbers were then escalated to account for the difference between the performance of the study and the project year in service.<sup>94</sup>

59. The RSP's fixed charge structure eliminates the uncertainty on the total amount subscribers will pay into the program, and thereby creates a higher likelihood that program costs will be covered by subscribers.<sup>95</sup>

60. The net effect on non-subscribers of lower production is largely mitigated by increased subscriber payments to offset the reduction in market energy revenues.<sup>96</sup>

61. The balance of costs and benefits for subscribers created by the RSP structure matches the way customers typically engage with renewable energy.<sup>97</sup>

62. Florida Power & Light Company (FPL) offers a program (SolarTogether) that began in 2020 with an almost identical rate structure to the RSP – with a capacity charge based on the amount of solar capacity needed to meet customers' renewable energy needs, and a benefits credit based on the actual production of the customers'

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<sup>90</sup> Exh. 11, *Wills Direct Testimony*, pp. 6-7.

<sup>91</sup> Exh. 11, *Wills Direct Testimony*, p. 8.

<sup>92</sup> Exh. 11, *Wills Direct Testimony*, p. 8.

<sup>93</sup> Exh. 11, *Wills Direct Testimony*, p. 13.

<sup>94</sup> Exh. 11, *Wills Direct Testimony*, p. 16-17.

<sup>95</sup> Exh. 11, *Wills Direct Testimony*, p. 10-11.

<sup>96</sup> Exh. 11, *Wills Direct Testimony*, p. 11.

<sup>97</sup> Exh. 11, *Wills Direct Testimony*, p. 12.

subscribed share of program capacity. FPL's program is fully subscribed for almost 1,500 MW of renewable generation capacity.<sup>98</sup>

63. When deciding whether to locate in Missouri, it will not matter to customers wanting a renewable source of energy that the generation resource is outside the state of Missouri since that resource will be part of Ameren Missouri's generation mix.<sup>99</sup>

64. Ameren Missouri solicited 20 customers for Phase 1 (Boomtown Solar) of the RSP. Among those customers, there was 269 MW of demand, but Phase 1 of the RSP is limited to 150 MW to match the resource (the Project) to be built for that phase.<sup>100</sup>

65. Across all twelve key scenarios tested, the existence of the program lowers the cost and in some cases the risk of the Project, in all cases improving the outcomes for all customers by approximately \$11.7-27.8 million NPVRR.<sup>101</sup>

66. Ameren Missouri's business development team is seeing an increasing number of economic development proposals that include a requirement for renewable energy access, across a variety of industry sectors.<sup>102</sup>

67. The Boomtown Solar Project will generate renewable energy that provides Renewable Energy Credits (RECs). RECs represent the legal entitlement to the renewable attribute of generation associated with qualified renewable resources. RECs have an observable market where the implied cost of the RECs under Ameren Missouri's RSP could be compared for reasonableness.<sup>103</sup>

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<sup>98</sup> Exh. 11, *Wills Direct Testimony*, p. 12.

<sup>99</sup> Tr. 156-157; Exh. 7, *Forsberg Direct Testimony*, p. 12.

<sup>100</sup> Exh. 11, *Wills Direct Testimony*, p. 20; and Ex. 7P, *Lindsey Forsberg Direct Testimony*, p. 12.

<sup>101</sup> Exh. 7, *Forsberg Direct Testimony*, p. 18; and Ex. 9P, *Lindsey Forsberg Surrebuttal Testimony*, p. 5, Table 2.

<sup>102</sup> Exh. 7, *Forsberg Direct Testimony*, p. 6.

<sup>103</sup> Exh. 11, *Wills Direct Testimony*, p. 4-5.

68. As part of the RSP, subscribing customers commit to the program for a fifteen-year contract term, and the RECs for the portion of renewable energy that their subscribed kilowatts produce are retired on their behalf.<sup>104</sup>

### III. Conclusions of Law

A. Ameren Missouri is an “electric corporation” and a “public utility,” as those terms are defined by Section 386.020, RSMo (Cum. Supp. 2022). As such, the Company is subject to the jurisdiction, supervision, control, and regulation of the Commission, as provided in Chapters 386 and 393, RSMo.

B. Section 393.170.1, RSMo (Cum. Supp. 2022), provides, in part, that “[n]o . . . electrical corporation . . . shall begin construction of a . . . electric plant . . . without first having obtained the permission and approval of the commission.”

C. Section 393.170.3, RSMo (Cum. Supp. 2022), provides that:

[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. . . .

D. Section 393.170, RSMo (Cum. Supp. 2022), sets the legal standard by which the Commission must determine whether to grant Ameren Missouri the certificate of convenience and necessity it seeks. In interpreting the meaning of that legal standard in a 1993 decision, the Missouri Court of Appeals said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is ‘necessary or convenient for the public service’ (*citing* section 393.170.3). The term ‘necessity’ does not mean ‘essential’ or absolutely indispensable’, but that

<sup>104</sup> Exh. 7, *Forsberg Direct Testimony*, p. 8; and Union Electric Company Electric Service MO.P.S.C. Schedule No. 6 (“Rider RSP”), Sheet No. 83.



an additional service would be an improvement justifying its cost (*citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2<sup>nd</sup> at 219). . . . Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. (*Citing State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 392 (Mo. App. 1975)).<sup>105</sup>

E. Commission Rule 20 CSR 4240-20.045 requires an electric corporation to obtain a CCN prior to operating “[a]n electric generating plant . . . that is expected to serve Missouri customers and be included in the rate base used to set their retail rates regardless of whether the item(s) to be constructed or operated is located inside or outside the electric utility’s certificated service area or inside or outside Missouri[.]”

F. In evaluating applications for certificates of convenience and necessity, the Commission has frequently considered five factors first described in a Commission decision regarding an application for certificate of convenience and necessity filed by Tartan Energy Company, LC, d/b/a Southern Missouri Gas Company.<sup>106</sup> The *Tartan* factors, as they have become known, are: “(1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant’s proposal must be economically feasible; and (5) the service must promote the public interest.”<sup>107</sup>

G. While the *Tartan* factors are frequently cited in Commission decisions regarding applications for certificates of convenience and necessity, they are merely guidelines for the Commission’s decision, and are not part of the legal standard set forth by the controlling statute. Moreover, the *Tartan* decision concerned an application for a

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<sup>105</sup> *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm’n*, 848 S.W.2<sup>nd</sup> 593, 597-598 (Mo. App. W.D. 1993).

<sup>106</sup> *In the Matter of the Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company*, 3 Mo. P.S.C. 3d, 173 (1994).

<sup>107</sup> *Tartan Energy*, at 177.

certificate to provide natural gas service to a particular service area. As a result, the described factors are not precisely applicable to Ameren Missouri's application to construct the Boomtown Solar Project. Nevertheless, they provide some guidance and are specifically referenced in the list of issues set forth by the parties for resolution by the Commission.

H. It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources.<sup>108</sup> The Commission has also previously expressed its general support for renewable energy generation because it provides benefits to the public.<sup>109</sup>

I. Subdivision 393.1400.2.(1), RSMo (Cum. Supp. 2022), which is referred to as the Plant in Service Accounting (PISA) statute, states:

Notwithstanding any other provision of this chapter to the contrary, electrical corporations shall defer to a regulatory asset eighty-five percent of all depreciation expense and return associated with all qualifying electric plant recorded to plant-in-service on the utility's books commencing on or after August 28, 2018, if the electrical corporation has made the election provided for by subsection 5 of this section by that date, or on the date such election is made if the election is made after August 28, 2018. In each general rate proceeding concluded after August 28, 2018, the balance of the regulatory asset as of the rate-base cutoff date shall be included in the electrical corporation's rate base without any offset, reduction, or adjustment based upon consideration of any other factor, other than as provided for in subdivision (2) of this subsection, with the regulatory asset balance arising from deferrals associated with qualifying electric plant placed in service after

<sup>108</sup> Sections 393.1025 and 393.1030 (Renewable Energy Standard); and Section 393.1075 (Missouri Energy Efficiency Investment Act).

<sup>109</sup> See, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092, Report and Order, p. 20 (MoPSC July 11, 2018) (citing to Report and Order, *In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, April 24, 2013, pp. 14-15; Report and Order, *In the Matter of the Application of KCP&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, March 2, 2016, pp. 15-16; Report and Order, *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program and File Associated Tariff*, File No. EA-2016-0208, December 21, 2016, pp. 19-20).

the rate-base cutoff date to be included in rate base in the next general rate proceeding. The expiration of this section shall not affect the continued inclusion in rate base and the amortization of regulatory asset balances that arose under this section prior to such expiration.

J. Subdivision 393.1400.2.(2), which is referenced in Subdivision 393.1400.2.(1), states:

The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances ordered by the commission. The provisions of this section shall not be construed to affect existing law respecting the burdens of production and persuasion in general rate proceedings for rate-base additions.

K. The PISA statute does not allow for immediate recovery of depreciation expense and return. Instead, those amounts are to be deferred in a regulatory asset for recovery in rates that will be established in a subsequent general rate case. The PISA statute applies to all depreciation expense and return associated with qualifying electric plant.

L. Subsection 393.1400.5, RSMo, which is also referenced in Subdivision 393.1400.2.(1), RSMo, indicates the PISA statute applies only to an electrical corporation that files notice with the Commission of its intent to be subject to that statute. As the Commission found in Finding of Fact No. 33, Ameren Missouri intends for the Project to be subject to the PISA statute.

M. Per 20 CSR 4240-22.010(2), “[t]he fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable, and efficient, at just and reasonable rates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.”

N. Under Subsection 393.140(11), RSMo (2016), the Commission has general authority to review any new tariffed programs and associated charges, such as the Renewable Solutions Program and its associated pricing.

#### **IV. Decision**

Ameren Missouri requests a certificate of convenience or necessity (CCN) to construct, install, own, operate, maintain, and otherwise control a 150 MW solar generation facility, located in White County, Illinois ("Boomtown Solar Project" or "Project"). Traditionally, in determining whether a certificate is "necessary or convenient for the public service," the Commission looks to five criteria referred to as the *Tartan* factors.<sup>110</sup> The *Tartan* factors contemplate: (1) the need for service, (2) the utility's qualifications, (3) the utility's financial ability, (4) the feasibility of the proposal, and (5) promotion of the public interest.

After reviewing all the evidence and arguments of the parties, the Commission determines that the certificate should be granted.

#### **The Tartan Factors**

##### Need for the Service

Ameren Missouri is in the process of replacing its fossil-fuel generating fleet. The Company has determined that new renewable generation is the most affordable energy resource to replace retiring coal-fired generation plants. Both Staff and OPC object to granting the CCN based on need. Staff presented evidence that the need to replace coal-fired generation will not occur until Rush Island is retired in 2026 and other coal-generating plants are retired in subsequent years. OPC took issue with the

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<sup>110</sup> *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173 (issued September 16, 1994).

replacement of dispatchable generating capacity with non-dispatchable renewable resources.

However, Ameren Missouri presented convincing evidence that renewable energy projects take five to eight years to develop and implement, that good projects are hard to come by, and that tax credits for renewable generation that will lower the cost of constructing new generation are available now. Thus, Ameren Missouri cannot wait until a coal-fired generation plant is retired to begin the process of replacing its capacity.

Further, Ameren Missouri presented evidence that the Project will provide needed energy in the summer, when both the Company and MISO need it most, at the lowest cost among available options. In addition, Ameren Missouri projects that new solar resources, including the Project, can meet winter capacity by 2026, when a shortfall is otherwise anticipated. Therefore, the Commission finds that there is a need for Ameren Missouri to build the Boomtown Solar Project.

The Project adds capacity and will generate renewable energy that is needed -- particularly during peak summer demand.

#### Qualifications and Financial Ability to Provide the Service

The second and third factors need not be considered further, as they are not in dispute. The Commission finds Ameren Missouri has the qualifications and the financial ability for the Project.

#### Economic Feasibility

OPC's position is that the fourth factor of economic feasibility has not been satisfied because the Project has not been shown to generate more revenues and avoid

more costs than the costs Ameren Missouri's retail customers will incur if the Company builds the Project.<sup>111</sup> However, the test is whether the improvement justifies its cost.

By 2026, the Company will need capacity to meet MISO requirements for capacity due to impending retirements of its coal-fired generation plants. The Project helps meet that capacity need – including peak summer and peak winter periods. **Renewable generation is the most affordable energy resource to replace coal-fired generation plants.** This project will also produce energy during peak times to serve customers. This means Ameren Missouri should not have to buy energy to meet its peak needs off the market at peak demand when costs are higher. However, the amount of savings are not quantifiable yet. Waiting to add renewable generation resources until coal-fired plants are retired and capacity need is immediate would put Ameren Missouri at risk of being unable to meet its customers' load at peak times. Like Ameren Missouri, MISO is no longer long on capacity, especially in peak summer months. The Company can no longer count on the MISO market as a source of low cost energy to meet its peak load. Delaying development of renewable generation also **exposes the Company to the risks of transmission constraints and higher financing rates in the future.**

The Project results from a competitive RFP process in which Ameren Missouri used due diligence in selecting a developer. The Company and the developer reached an arms-length agreement on a contract to build and transfer ownership of the Project. Thus, the Project is being acquired at fair market value.

Tax credits are currently available to reduce the cost of the Project that may not be available in the future. In addition, **it is anticipated that the Project will generate excess**

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<sup>111</sup> File No. EA-2022-0245, *Public Counsel's Positions* (filed Jan. 27, 2023).

energy that can be sold into the MISO market, further reducing the Project's cost. The Commission finds the Project economically feasible.

#### Promotes the Public Interest

Ameren Missouri presented evidence that electric utilities compete for scarce resources when seeking to secure renewable facility siting, permits, and equipment. Project development can take years, and if a project is optioned, the failure to timely execute on that option allows other interested parties to acquire the site, equipment, and permits. The Company also presented evidence that it is not feasible to wait until a projected shortfall is about to occur before adding renewable resources, given the implementation timeline for renewable projects and the limited availability of suitable projects.

The recent retirement and planned retirement of three of Ameren Missouri's four coal-fired generation facilities by 2030 will change the Company from, historically, having a long buffer on both energy and capacity to having a shortfall as soon 2024. Ameren Missouri presented evidence that, if it is able to execute its Preferred Resource Plan, which includes the Project, it should have sufficient resources every year long-term, and the Company would be expected to be a net seller of electric energy at levels roughly equivalent to what it has seen historically.<sup>112</sup>

The evidence presented shows that, by acting to add renewable resources now, Ameren Missouri will avoid possible (1) deployment of less beneficial resources that might occur due to limited availability of viable tax credits, (2) transmission constraints causing delays or higher costs, and (3) higher future financing rates. Adding renewable energy

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<sup>112</sup> Exh. 3, *Michels Surrebuttal Testimony*, pp.11, 15.

generation in place of fossil fuel generation provides a hedge against risks associated with power prices, carbon prices, and fuel prices.

The Project has economic development benefits. Demand for clean, reliable, and affordable energy is an increasingly important factor in determining where businesses locate new jobs and investment. Missouri is competing with other states for new jobs and investment from businesses that have large energy demand and a need for renewable energy resources. Customer preferences for renewable energy and corporate sustainability goals by Missouri's large employers for their energy needs should not be dismissed.

The Commission finds that the Project promotes the public interest.

In a nutshell, the Boomtown Solar Project satisfies all five of the Tartan factors and provides an improvement to Ameren Missouri customers that justifies its cost. The Commission will grant the CCN, but with conditions.

Staff and OPC have suggested the Commission attach several conditions to the granting of a CCN for the Project. Ameren Missouri agreed that imposition of four of the conditions, with an unopposed modification to a fifth condition, was acceptable to the Company. With the exception of the conditions set out below, the Commission does not find any other proposed conditions to be reasonable or necessary. The Commission will condition the granting of the CCN on a limited number of conditions, as set forth in the order, below. With these reasonable and necessary conditions, the Commission finds that granting Ameren Missouri a CCN is reasonable and in the public interest.



## **The RSP**

The proposed RSP is a utility-operated renewable service program that brings new renewable resources to Ameren Missouri's system supported by binding commitments from customers with firm demand. Commercial and industrial customers have already made a commitment to capacity under the RSP. Additionally, the program is tied to the Boomtown Solar Project.

Under Subsection 393.140(11), RSMo., the Commission has general authority to review any new tariffed programs and associated charges, such as the Renewable Solutions Program and its associated pricing. OPC suggests that this is not an appropriate proceeding for the Commission to review the RSP. OPC does not cite to any authority that requires a separate proceeding, but rather, OPC witness Dr. Marke suggests that the Company's pending electric rate case, File No. ER-2022-0337, is a "better venue" for review of the RSP because the cost of service data used to establish the Renewable Benefits Credit is expected to be updated in the pending case. Because the RSP is interrelated with the CCN and Ameren Missouri's electric rate case is operating on a separate and distinct procedural schedule, the Commission finds the most efficient and effective review of the RSP is during the course of this case.

The program structure is proposed to include multiple phases and multiple resource types. The pricing will be dependent on the phases. Additionally, the credit will annually escalate by 2.5 percent. The testimony from the Company witnesses and the proposed tariff shows that any RECs generated will be retired on behalf of the customer.

The RSP is proposed as an optional rider that is available to customers under 3(M), 4(M), and 11(M) services. The rider has two billing components. The first component is

the Renewable Resource Charge, which is a \$/kW charge assessed based on the amount of program capacity contracted by the customer. This charge is designed to reflect the costs associated with the resources for the phase the customer has contracted. The second component is the Renewable Benefits Credit, which is \$/kWh credit based on the production from the renewable energy resource.

Ameren Missouri cites two main components driving their renewable program. The first is that they are seeing a number of corporate customers tracking carbon goals and seeking clear, near-term ways to reduce carbon emissions. Offering its larger customers an option to purchase renewable energy is one way for Ameren Missouri to help prevent these customers from leaving, or seeking to expand outside, the Ameren Missouri service territory. Furthermore, the RSP is seen as a step along Ameren Missouri's net zero carbon reduction goal by 2045.

Ameren has proposed multiple programs in the past. The most recent program is Renewable Choice, which is described as following a Power Purchase Agreement model. However, Renewable Choice has not resulted in any projects and remains unsubscribed. This shows that the non-binding nature of Renewable Choice and the variable charges created uncertainty, resulting in an unfavorable environment for executing resource projects.

The evidence also showed that FPL's SolarTogether, which Ameren Missouri explicitly mentions as a model for their program has been fully subscribed demonstrating success with that particular program model.

The Commission finds the RSP will lower the NPVRR associated with the Project because the Project's cost is being subsidized by the RSP subscribers. Additionally, the

RSP will make Missouri more competitive in attracting and retaining businesses or business expansions, which in turn generates jobs, taxes, other economic benefits and allows the Company to spread its fixed costs over more sales, to the benefit of all customers. This competitive advantage is supported regardless of the location of the renewable facility at issue – as evidenced by the robust subscriptions already in hand from subscribing customers who sought even more MW of renewable capacity than the Project makes available.<sup>113</sup>

#### Tracking Benefits

Both Staff and OPC oppose granting the RSP arguing that the Project's costs will exceed RSP subscriber revenues and the difference will have to be covered by non-subscribers. OPC's position is that any approval of the RSP should be conditioned on including a 50/50 risk sharing between Ameren Missouri and its retail customers of any shortfall in revenues attributable to the Boomtown Solar Project and the cost of that project in Ameren Missouri's revenue requirement and fuel adjustment clause.

Ameren Missouri argues there should be no conditions placed on approval of the RSP. Ameren Missouri's argument is that the RSP reduces the customer revenue requirements added by the Project and reduces the economic risks of the Project. The Company's position is that OPC's suggestion of a 50/50 risk sharing arrangement between customers and the Company for a needed resource is inappropriate.

A key part of the RSP is that the benefits Ameren Missouri has presented will accrue to all customers as a result of subscribers paying a premium in order to claim the renewable attributes of the program resource. Thus, the Commission determines that a

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<sup>113</sup> Tr. 156-157; Ex. 7, *Forsberg Direct Testimony*, p. 12.

tracker is needed to ensure that all of **those benefits** ultimately accrue to all customers.

Commented [JL3]: My emphasis

However, the degree to which **such benefits** manifest cannot be determined without also tracking the costs. Therefore, the Commission will direct Ameren Missouri to track and specifically delineate within each FERC account all revenues, investments and expenses associated with the RSP and the Project. The Commission will also direct that the tracked information accompany or be made available with the filing of its next rate case for Commission consideration.

The Commission also finds it reasonable to make this report and order effective in less than 30 days in consideration of the Company's original request related to the timing of the decision and in consideration of the May 1, 2023, proposed tariff effective date of the RSP and to allow for necessary contracting and construction to begin expeditiously.

**THE COMMISSION ORDERS THAT:**

1. Ameren Missouri is granted a certificate of convenience and necessity (CCN) to construct, install, own, operate, maintain, and otherwise control a 150 MW solar generation facility, located in White County, Illinois (the Project), pursuant to a build transfer agreement (BTA) with Boomtown Solar Holdings LLC, subject to the following conditions:

- a. Ameren Missouri shall use sound engineering judgment and commercially reasonable efforts to meet the IEEE standard P2800 for the Project and future transmission interconnected solar projects.
- b. The in-service criteria contained in Exhibit 104C, Lange Rebuttal Testimony, Confidential Attachment SEL-3 and Confidential Attachment SEL-4 shall be used to determine whether the Project is in-service.
- c. Ameren Missouri shall file with the Commission as-built drawings for the Project within 100 days after the "Final Completion Deadline," as defined in the BTA, provided that if Invenergy is excused under the terms of the BTA from providing certain as-built drawings by that deadline, Ameren Missouri

will file such as-built drawings within ten (10) days after receipt thereof from Invenergy. Ameren Missouri will notify the Staff of the Commission within ten (10) days after the Final Completion Deadline if there are any as-built drawings for which Invenergy was excused from delivering by that deadline.

- d. Ameren Missouri shall file with the Commission the final version of the plans for restoration of safe and adequate service no later than 60 days after the site is commercially operational.
- e. Ameren Missouri shall file with the Commission quarterly progress reports on the plans and specifications for the Project, and the first report shall be due on the first day of the first calendar quarter beginning after the CCN is issued.

2. Ameren Missouri is authorized to engage in the transactions by which it, through various subsidiaries, will construct and finance the Project, including transactions under the BTA.

3. Ameren Missouri is authorized to create and execute a subscription-based Renewable Solutions Program (RSP) which offers eligible customers an opportunity to subscribe to a voluntary renewable energy purchasing program in which Phase 1 of the program would be supported by the Boomtown Solar Project. Approval of the RSP is subject to the conditions listed in the next paragraph, below. The details of the RSP are contained within the following tariff sheets filed by Ameren Missouri on July 14, 2022, assigned Tracking Number YE-2023-0010, and approved by the Commission to become effective on May 1, 2023:

**Mo. P.S.C. Schedule No. 6**

- 2<sup>nd</sup> Revised Sheet No. 83, Cancelling 1<sup>st</sup> Revised Sheet No. 83
- 2<sup>nd</sup> Revised Sheet No. 83.1, Cancelling 1<sup>st</sup> Revised Sheet No. 83.1
- 2<sup>nd</sup> Revised Sheet No. 83.2, Cancelling 1<sup>st</sup> Revised Sheet No. 83.2
- 2<sup>nd</sup> Revised Sheet No. 83.3, Cancelling 1<sup>st</sup> Revised Sheet No. 83.3
- Original Sheet No. 83.4
- Original Sheet No. 83.5
- Original Sheet No. 83.6

4. Ameren Missouri shall track and specifically delineate within each FERC account all revenues, investments and expenses associated with the Renewable Solutions Program and the Boomtown Solar Project. The tracked information shall accompany or be made available with the filing of its next rate case for Commission consideration.

5. Ameren Missouri is authorized to do and perform, or cause to be done and performed all such acts and things, as well as make, execute, and deliver any and all documents as may be necessary, advisable, and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

6. This report and order shall become effective on April 22, 2023.



**BY THE COMMISSION**

A handwritten signature in cursive script that reads "Nancy Dippell".

Nancy Dippell  
Secretary

Rupp, Chm., Coleman, Holsman, and  
Kolkmeier CC., concur and certify compliance  
with the provisions of Section 536.080, RSMo (2016).

Seyer, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 12<sup>th</sup> day of April, 2023.



*Nancy Dippell*

Nancy Dippell  
Secretary

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MOPSC  
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**MISSOURI PUBLIC SERVICE COMMISSION**

**April 12, 2023**

**File/Case No. EA-2022-0245**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Nancy Dippell**  
**Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.