

comment submitted via the Commission’s case-specific comment portal for this case). Mr. Bailey’s Consumer Comment expressed concerns regarding the lack of planning and zoning in Pike County, questions about environmental studies, and questions about governmental subsidies (presumably tax credits for renewable generation). Mr. Bailey asked, “will there be any public hearings?”

5. At the time the Commission received Mr. Bailey’s Consumer Comment, Staff was engaged in discovery in this case (Staff propounded more than 200 data requests (“DRs”) on the Company, many of which contain multiple subparts (double-digit subparts in numerous DRs)). Also at that time, the procedural schedule afforded Staff another month by which it was required to file its rebuttal testimony.

Argument

6. In considering the Staff’s Motion, certain legal principles should be kept in mind. First, it is well-established that the Commission “is a body of limited jurisdiction and has only such powers as are expressly conferred on it by the Statutes and powers reasonably incidental thereto.” *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943). Second, it is also well-established that when the Commission considers a request for a CCN it is the “interest of the public as a whole” (as contrasted to the interest of an individual or a group of individuals, including a locality like a county) that is at issue. *State ex rel. Pub. Water Supply Dist. No. 8 of Jefferson City. v. Pub. Serv. Comm’n*, 600 S.W.2d 147, 156 (Mo. App. W.D. 1980). And when considering the public interest questions inherent in a CCN case, the Commission’s jurisdiction is primarily directed at a much broader segment of the public and not at the private interests of a few individuals. *Id.* Finally, the Commission’s interest and duty is primarily directed to the interests of regulated utility ratepayers in terms of their utility service. *See State ex rel. Capital City Water Co. v. Pub. Serv. Comm’n*, 850 S.W.2d 903, 911 (Mo. App.

W.D. 1993) (“The Commission’s principal interest is to serve and protect ratepayers.”), and *State ex rel. Ozark Elec. Coop. v. Pub. Serv. Comm’n*, 527 S.W.2d 390, 394 (Mo. App. W.D. 1975).

7. The desire of one individual for a local public hearing provides no basis for holding such a hearing. If indeed Mr. Bailey had concerns that were within the purview of the Commission’s authority to address, he could have sought to intervene in the case, or the “concerned citizens” the Staff references could have done so as a group. The Commission is well familiar with citizens groups timely seeking and being granted intervention in CCN cases. *See, e.g.*, File No. EA-2023-0017, the Grain Belt Express CCN amendment case, in which citizens group Missouri Landowner Alliance sought and was granted intervention; and File No. EA-2015-0196, the Ameren Transmission Company of Illinois Mark Twain CCN case, in which citizens group Neighbors United Against Ameren’s Transmission Line sought and was granted intervention. The same option was available to the Pike County Commission. *See, e.g.*, Matter of Application of Intercon Gas, File No. GA-90-280 (involving a CCN request in which the Franklin County Commission sought and was granted intervention). Neither Mr. Bailey, any concerned citizen group, nor the County afforded themselves of the opportunity that was available to them.

8. There are also substantial questions respecting whether this Commission is the proper forum to air or address Mr. Bailey’s issues in any event; indeed, the Company respectfully submits it is not.

9. It is common knowledge that there are those in rural Missouri who have concerns about the use of farmland for renewable energy facilities, and that issues such as those Mr. Bailey raised have come up in those conversations. Indeed, the Missouri General Assembly (which *is* the proper body to address those issues, if they should be addressed) has very recently considered legislation in this area. *See, e.g.*, H.B. No. 1065 (Mo. Gen. Assembly 2022) dealing with certain prerequisites to a utility’s ability to seek a CCN for a solar farm, and also new county authority

respecting permission to construct solar generation (the House Utilities Committee held a public hearing on the bill, but it did not pass the General Assembly). The Commission can't make rulings about whether a county should or should not have local zoning, or what that zoning should look like, the Commission can't create environmental laws applicable to solar or any other technology, and the Commission has no authority to decide whether the tax credits currently available for solar facilities will be repealed or changed by Congress. These are the issues Mr. Bailey cites in his Consumer Comment, but his forum for addressing those concerns is not the Commission.

10. The Staff also expresses a "belief" that a local public hearing could "benefit the Commission" concerning property taxes arising from the Bowling Green facility to be located in Pike County. The Staff doesn't explain why if it had additional questions on that topic it did not conduct discovery to get them answered. The Company provided information in its Application (see Application ¶ 24) about property taxes relating to the Pike County facility (in Bowling Green) in June. Staff did ask a few DRs on the topic from mid-July to early August, which were answered. Staff asked no questions after submission of the September 11 Consumer Comment and provided no information to the Commission on the topic in its October 11 rebuttal testimony.²

11. One last point bears noting. Mr. Bailey could not have exercised "authority of [a] Pike County Commissioner" unless the Pike County Commission, pursuant to a properly noticed County Commission meeting and vote according to the requirements of Missouri law, authorized him to do so. There is no evidence that this has occurred and again, if the County Commission desired that its voice be heard by the Commission, it could have, and should have, timely

² And Mr. Bailey's Consumer Comment doesn't raise a property tax issue in any event. Moreover, state policy on property taxes is a matter of state statute, which of course is under the authority of the General Assembly (not this Commission) and administered by the State Tax Commission – again, not this Commission.

intervened.

Conclusion

12. No cogent reason to hold a local public hearing has been provided by the Staff or anyone else. No timely interventions were sought by Mr. Bailey or Pike County, the issues raised concern matters within the purview of the General Assembly and not this Commission, and whatever information Staff thinks could be beneficial respecting property taxes was available to Staff throughout the pendency of its four-month review period before it filed rebuttal testimony. This case is just over a month away from the scheduled evidentiary hearing, including an intervening major holiday. Staff has filed hundreds of pages of rebuttal testimony from 14 witnesses. There is plenty to do for the parties and undoubtedly the Commission to prepare for an orderly presentation of this case so that the Commission can hear the evidence and get any questions it would like to see answered that are within the purview of its authority in a CCN case. The request for a local public hearing should be denied under these circumstances.

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
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Dated: October 30, 2023

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing was served on all parties of record via electronic mail (e-mail) on this 30th day of October, 2023.

/s/ James B. Lowery