BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Dogwood Energy, LLC's Petition for Revision of Commission Rule 4 CSR 240-3.105	)))	**File No. EX-2014-0205**

STAFF RESPONSE TO COMMISSION ORDER DIRECTING STAFF TO INVESTIGATE AND FILE RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel of the Staff Counsel's Office, and files in File No. EX-2014-0205 *Staff Response To Commission Order Directing Staff To Investigate And File Recommendation* recommending that the Commission initiate the rulemaking as requested by Dogwood Energy, LLC ("Dogwood"), but structure the rulemaking so that there is a comment period and a reply comment period before the legislative type hearing that the Commission holds. In support thereof, the Staff states as follows:

1. On January 8, 2014 Dogwood filed a rulemaking petition with the Commission asking the Commission to amend 4 CSR 240-3.105 to clarify that electric utilities must obtain advance approval from the Commission before acquiring electric plant built by others as a regulated asset in Missouri or another state, before undertaking major renovation projects of its existing electric plant in Missouri or another state, such as to increase capacity, extend the life of the plant, or comply with environmental regulations, and before constructing electric plant in another state, as required as asserted by Dogwood by Section 393.170 RSMo. 2000.

2. Also on January 8, 2014, the Commission issued its *Order Directing Staff To Investigate And File Recommendation* in which it directed the Staff to file no later than February 14, 2014, a recommendation whether the Commission should proceed with a rulemaking.

Legal Issues

3. As a consequence of the *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 34 (Mo.App. W.D. 2005) ("*StopAquila.Org*") and the *State ex rel. Cass County v. Public Service Comm'n*, 259 S.W.3d 544 (Mo.App. W.D. 2008) ("*Cass County*") decisions, the Staff agrees that there should be a rulemaking to amend 4 CSR 240-3.105 Filing Requirements For Electric Utility Applications For Certificates Of Convenience And Necessity. As Staff views Dogwood's petition and the issues left by the *StopAquila.Org* and *Cass County* cases, the rulemaking should encompass issues such as:

(a) Whether separate certificates of convenience and necessity ("CCNs") should be required for each generating unit at a multi-unit site in particular if there is more than a lapse of two years between the end of construction of one unit and the beginning of construction of the next unit;

(b) Whether separate CCNs should be required for substantial renovation/ refurbishment of an existing unit which changes the principal fuel used, increases the capacity of the unit, extends the life of the unit, or appreciably changes the emissions, noise level, or traffic from or at the plant;

(c) Whether separate CCNs should be required for the construction of a generating unit in a state other than Missouri that will be treated in rate base and operating expense for the purpose of setting Missouri rates for Missouri native load; and

(d) Whether separate CCNs should be required for acquiring electric plant built by others in Missouri or another state to be treated in rate base and operating expense for the purpose of setting Missouri rates for Missouri native load.

The Staff will take issue with much of the language that Dogwood proposes in Exhibit 1 to its petition but the Staff views it as a vehicle for amending Commission Rule 4 CSR 240-3.105 which needs amending.

Technical - Policy Issues (Chapter 22) vs. Legal Issues

4. What Dogwood addresses with its petition raises principally legal issues in the Staff's view in the wake of the *StopAquila.Org* and *Cass County* decisions. The technical process issues that Dogwood desires to raise with its petition, the Staff believes the Commission has addressed in the Commission's Chapter 22 Electric Utility Resource Planning rulemakings in 1993 and 2011 and the individual utility filings in response to Chapter 22. John Rogers, Staff Utility Regulatory Manager, addresses this matter in general in Attachment A to this filing and in particular in Attachment A in response to Dogwood's reference to The Empire District Electric Company ("Empire") Riverton Unit 12 Conversion.

5. Dogwood proposes that 4 CSR 240-3.105(1)(E) be revised/amended to mandate competitive bidding procedures for identifying the costs of alternative solutions to the electric plant which is the subject of the CCN application and that there be language that provides for the Commission to appoint an "independent and unbiased monitor" other than the Commissioners themselves to evaluate such costs and supporting information. There are no such provisions in Chapter 22 Electric Utility Resource Planning. The Staff does not consider such provisions any more appropriate for 4 CSR 240-3.105(1)(E) than for Chapter 22.

6. There is some legal analysis in Dogwood's petition but not as much as the Staff would expect to see for Commission to rely on various of the assertions contained

in the petition and the proposed rule amendment Attachment 1 thereto. The Staff does not know which entities will choose to file on February 14, 2014 responses to Dogwood's petition, what may be the degree of the legal analysis they may provide, and, as a consequence, what opportunity they will provide to further address what Dogwood has proposed in its petition prior to the Commission needing to take action pursuant to Section 536.041 RSMo (Supp. 2012). The Staff has made an attempt to address as much of Dogwood's petition in this filing, but believes that there is further analysis that can be done in the rulemaking itself.

***StopAquila.Org* and *Cass County* Decisions**

7. Dogwood quotes at page 3 of its petition Section 393.170.1 and notes as significant the words bolded below. The Staff would also note for the Commissioners the sentence bolded in Section 393.170.3 below:

> 393.170. 1. No gas corporation, electrical corporation, water corporation or sewer corporation shall **begin construction** of a gas plant, electric plant, water system or sewer system **without first having obtained the permission and approval of the commission**.
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> 3. The 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. **Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.**

8. Dogwood cites the *Cass County* decision at pages 3-4 of its petition for the Western District Court of Appeals' holding that regarding the construction of capital plant projects advance approval from the Commission is required. The capital plant projects which were the subject of the *Cass County* case were the Aquila, Inc. 315

megawatt South Harper peaking plant and the Aquila, Inc. Peculiar substation supporting the South Harper peaking plant. They were new construction on undeveloped sites in Aquila's previously certificated service territory.[1] The Court held in the *Cass County* decision that authority to grant *post hoc* approval for the construction of a power plant is not contained in Section 393.170. In the preceding Western District Court of Appeals decision, *StopAquila.Org*, the Court made clear that a mere grant of a CCN for a utility to serve an area is not authorization to construct electric generating plant. The Court cited *State ex rel. Harline v. Public Serv. Comm'n*, 343 S.W.2d 177 (Mo.App. W.D. 1960) for drawing the distinctions in the scope of authority addressed by each of the subsections of Section 393.170 and then stated:

> . . . we believe that the legislature, which clearly and unambiguously addresses electric plants in subsection 1 [of § 393.170], did not give the Commission the authority to grant a certificate of convenience and necessity for the construction of an electric plant without conducting a public hearing that is more or less contemporaneous with the request to construct such a facility. Subsection 3 requires a hearing to determine if "such construction . . . is necessary or convenient for the public service." § 393.170.3. . . .
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> 180 S.W.3d at 34.

9. The Staff finds it of interest that the *StopAquila.Org* Court refers to the requirement of a CCN for the construction of a power plant in the singular:

> By requiring public utilities to seek Commission approval each time they begin to construct a power plant, the legislature ensures that a broad range of issues, including county zoning, can be considered in public hearings before the first spadeful of soil is disturbed. There is nothing in the law or logic that would support a contrary interpretation. . . . This strongly suggests that the legislature intended that **a public hearing relating to the construction of each particular electric plant, take place in the months *before* construction begins**, so that current conditions, concerns and issues, including zoning, can be considered, whether that hearing is conducted by the county or the Commission.

[1] *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 27-28 (Mo.App. W.D. 2005).

180 S.W.3d at 37-38; Footnote omitted; Bold face emphasis added.

10. The Staff also finds it significant that the *StopAquila.Org* Court does not solely use the word "construction" that is found in Sections 393.170.1 and 393.170.3 but uses the words "new construction":

> Other states may have specific statutory provisions to address what a public utility is required to do if it wishes to build new facilities or extend its lines in territory already allocated to it, but Missouri does not. We end where we began, with section 393.170.1, which, in plain and unambiguous language, provides "No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission." Because subsection 3 further imposes a finding of necessity and convenience "after due hearing" for "such construction," we believe that the legislature wanted the Commission to conduct hearings whenever **new construction** is proposed. . . .

180 S.W.3d at 39; Emphasis added.

11. The *StopAquila.Org* Court in rendering its opinion held that the Commission's Report And Order in *Re Union Electric Company*,[2] 24 Mo.P.S.C.(N.S.) 72, Case No. EO-79-119 (1980) was incorrectly decided. 180 S.W.3d at 36-37. In Case No. EO-79-119, Union Electric Company ("UE") filed an application seeking authority to construct, operate and maintain two combustion turbine generating units within its certificated service territory at UE's Meramec Power Plant property and its Sioux Power Plant property. UE proposed to locate the combustion turbine generating units at the Meramec and Sioux Power Plants so that the blackstart capability of these units could be used to start the Meramec and Sioux baseload turbines from a cold start. 24 Mo.P.S.C.(N.S.) at 73, 75.

[2] In the matter of the application of Union Electric Company for permission and authority to construct, operate and maintain two combustion turbine generating units in the state of Missouri.

12. UE and the Staff filed prepared testimony and schedules. An evidentiary hearing was held. The General Counsel filed a motion to dismiss and suggestions in support of said motion. UE filed an answer and requested the Commission to deny the General Counsel's motion. The General Counsel filed a motion for oral argument and the Commission granted the motion. *Id*. at 73.

13. Some of the oral argument of Counsel for UE is worth noting, as he related at the Case No. EO-99-119 oral argument, UE's practice of seeking CCNs for generating plant up to Case No. EO-99-119:

> [Mr. Barnes (UE)]: First of all, do we need a certificate for the combustion turbines? . . .
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> Relying on the wording of these statutes [393.170(1) and 386.020 electric plant], we have always sought Commission approval for constructing generating units in our certificated areas; Meramec, 1950; and since the Harline case there has been Portage des Sioux, 1963; Labadie, 1966; Rush Island, 1971; a combustion turbine at Howard Bend in '72; and a combustion turbine at Meramec in 1973. The Commission has never questioned our duty to seek their approval in these cases. And, in fact, did not question our application in this case until a month after the hearing was held.

Case No. EO-79-119, July 10, 1979, Transcript, pp. 191-93.

14. Case No. EO-79-119 was submitted for decision. 180 S.W.3d at 74. The Commission stated that the threshold question to be addressed was whether an electric utility under the Commission's jurisdiction must obtain the Commission's approval through the issuance of a CCN before it may build generating plant within its certificated service territory. *Id*. at 76. The Commission held that it is not necessary for an electric utility to come before the Commission to obtain the Commission's approval through the issuance of a CCN before it may build generating plant within its certificated service territory. *Id*. at 78. The *StopAquila.Org* Court found the Commission to be in error.

15. Undersigned counsel's effort to research the Commission's archives to date indicates that not every electrical corporation within the Commission's jurisdiction, followed UE's practice of filing for a CCN for the construction of a generating station in its Missouri certificated service territory. In fact it appears that UE was unique in this practice.

16. Even then there is the question of whether one CCN covers a multi-unit generating station site. UE did not file separate CCNs for separate generating units on the same site. In undersigned Staff counsel's research, he has only found that Empire filed for a CCN for Empire Energy Center Unit 2 (*Re Kansas City Power & Light Co., St. Joseph Power & Light Co., and The Empire District Electric Co*., 22 Mo.P.S.C.(N.S.) 249, Case No. EM-78-277, Report And Order (1978)) after having filed for a CCN for Empire Energy Center Unit 1 (*Re The Empire District Electric Co*., 21 Mo.P.S.C.(N.S.) 351, Case No. EA-77-38, Report And Order (1977)). (See Attachment B, entries "(11)" and "(12)").

17. In recent history, a Nonunanimous Stipulation And Agreement was approved by the Commission in 2005 in Case No. EO-2005-0329 which comprised the Kansas City Power & Light Company ("KCP&L") Experimental Alternative Regulation Plan providing for the environmental retrofitting of the Iatan 1 power plant and the construction of the Iatan 2 power plant in Platte County, Missouri. The Sierra Club and the Concerned Citizens of Platte County appealed the Commission's decision on, among other grounds, that the CCN that KCP&L had received in 1973 in *Re Kansas City Power & Light Co. and St. Joseph Light & Power Co*., Case No. 17,895, Report And Order (1973)(Unreported Case) was no longer effective because Iatan 2 had not

been constructed within two years of the issuance of the CCN as provided for by Section 393.170(3). (See also Attachment B entry "(4)" regarding CCNs for Bagnell Dam, Federal Power License, Project No. 459.) There is no reported decision because KCP&L and the Sierra Club and the Concerned Citizens of Platte County ultimately settled this litigation along with other litigation after an application to transfer to the Missouri Supreme Court had been granted by the Missouri Supreme Court.

Dogwood's "Prevailing Wages" Statute Cases

18. At page 9 of its petition, Dogwood asserts that "the Court of Appeals' holdings in the *StopAquila.Org* cases, the Commission's rule should confirm that 'construction' of electric plant as defined by Sections 386.020 and 393.170 includes major renovation projects like Empire's planned conversion of the Riverton Unit 12 combustion turbine facility into a combined cycle facility at an estimated cost of $165,000,000-175,000,000." The words "renovation" or "refurbishment" do not appear in either the *StopAquila.Org* or the *Cass County* Western District Court of Appeals decision. Dogwood cites two "prevailing wages" statute cases in its petition at page 9, neither of which involve entities related to the jurisdiction of the Commission. There are no appellate court cases reported involving entities within the jurisdiction of the Commission and the "prevailing wages" statutes cited by Dogwood.[3] The case which Dogwood uses for its argument that Section 393.170 should be read in *pari material* with the "prevailing wages" statutes, *Hadel v. Board of Edu. of School Dist. of Springfield*, 990 S.W.2d 107 (Mo.App. S.D. 1999) (*Hadel*), interestingly quotes the definition of "construction" and "construct" as follows:

[3] Sections 290.210 to 290.340.

> Additionally, we note that Black's Law Dictionary defines "construction", in pertinent part, as: "[t]he creation of something new, as distinguished from the repair or improvement of something already existing. The act of fitting an object for use or occupation in the usual way, and for some distinct purpose." BLACKS LAW DICTIONARY 312 (6th ed.1990). Black's Law Dictionary also defines "construct" as: "[t]o build; erect; put together; make ready for use. To adjust and join materials, or parts of, so as to form a permanent whole. To put together constituent parts of something in their proper place and order. 'Construct' is distinguishable from 'maintain,' which means to keep up, to keep from change, to preserve." BLACK'S LAW DICTIONARY 312 (6th ed.1990). In *Larson v. Crescent Planing Mill Co.,* 218 S.W.2d 814 (Mo.App.1949), the Eastern District of this Court also acknowledged "that the term 'construction' is ordinarily defined as the building or erection of something which did not exist before as distinguished from the alteration, repair, or improvement of something already existing." *Id.* at 820. However, the *Larson* court also observed that "the word is one of variable meaning," essentially depending upon its meaning in the context in which the word may be used.

Id. at 112; Footnote omitted. The *Hadel* case itself involved actions against the Board of Education of the School District of Springfield for failure to take bids for removal and replacement of up to 20% of the total roof surface area of several school buildings.

19. In the other "prevailing wages" statute case cited by Dogwood, *Utility Service Co., Inc. v. Department of Labor & Indus. Relations*, 331 S.W.3d 654 (S.Ct.banc 2011), Monroe City entered into a water tank maintenance contract with Utility Services, Inc. for work on the City's elevated water tank and tower. The question was whether the Missouri Prevailing Wage Act applied to the work performed under the contract.

20. The unique standing of the Commission has been noted by Missouri courts. Section 386.410.1 and its predecessors extending back to the 1913 "Public Service Commission Law" have authorized "rules to be adopted and prescribed by the commission." Courts reviewing these rules and regulations have observed that cases

coming before the Commission are not like Administrative Procedure Act cases.[4] "Proceedings before the Public Service Commission are considerably different from and vastly more complicated than the type of proceedings" governed by the Administrative Procedure Act. *Id*. "The legislature has recognized these differences by creating the special and quite detailed statutes mentioned pertaining to proceedings conducted by the Commission. The authority under Section 386.410.1 for the Commission to adopt its own rules of procedures seems to be a rather uncommon grant to an administrative agency …." *Id*. Chapter 536 supplements Chapter 386 regulating the Commission, except where in direct conflict with it. The procedures set out in Chapter 536 apply unless a contrary provision exists in Chapter 386.[5]

Dogwood's Construction Financing Case
And Construction Accounting (AAO) Case

21. Dogwood argues in various ways at pages 9-10 of its petition that the scope of Section 393.170 reaches beyond the state of Missouri; for example, "the Commission has previously exercised its jurisdiction over Empire's interest in the Plum Point generation plant in Arkansas. See, e.g., Case No. EF-2006-0263 (approval of construction financing); Case No. EO-2010-0262 (approval of construction accounting)." The construction financing case, Case No. EF-2006-0263, cites for authority Sections 393.180 and 393.190, not Section 393.170, and requests Commission approval to issue and sell up to and including $255,000,000 principal amount of Empire's First Mortgage Bonds. Empire's application in Case No. EF-2006-0263 states that the Commission

[4] *State ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 645 S.W.2d 44, 50 (Mo.App. W.D. 1982).

[5] *State ex rel. Utility Consumers Council v. Public Serv. Comm'n*, 562 S.W.2d 688, 693 n. 11 (Mo.App. St. L. 1978), *cert. denied*, 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978).

has jurisdiction because Empire will create a lien or encumbrance on its Missouri properties to secure payment of bonded indebtedness. See Section 393.190. There is no mention of the Plum Point generating unit. Even though there is mention of the "Projected Infrastructure Investments as detailed in Appendix A of the Experimental Regulatory Plan approved by the Commission in Case No. EO-2005-263" in Empire's application, Plum Point was not part of the Empire Experimental Regulatory Plan. Thus, in Case No. EF-2006-0263 Empire seeks approval from the Commission to mortgage its Missouri properties to secure the Bonds.

22. The second case cited by Dogwood for the scope of Section 393.170 reaching beyond the state of Missouri, Case No. EO-2010-0262, is in essence an accounting authority order ("AAO") case, i.e., a request for an AAO authorizing "construction accounting" for Plum Point, although the term accounting authority order/AAO is never used. Empire cites for Commission authority Section 393.140(8) RSMo., not Section 393.170. Construction accounting is intended to address the situation of a generating unit becoming fully operational and used for service for a consequential period of time before the generating unit can be reflected in rates being charged to ratepayers. The Staff's April 27, 2010 Memorandum Recommendation notes that Empire had not agreed to participate in Plum Point at the time the Empire Experimental Regulatory Plan was pending before the Commission. The memorandum recommendation states that Plum Point was then scheduled to become fully operational and used for service in the summer of 2010. Empire's application was in conformity with a Non-Unanimous Stipulation And Agreement in a then-pending Empire rate increase case. The Staff recommended that the Commission approve the application.

On June 5, 2010, the Commission issued an Order Authorizing The Utilization Of Construction Accounting.

23. At pages 9-10 of its petition, Dogwood argues, with no citation to authority, that the Commission's amendment of 4 CSR 240-3.105 for CCNs pursuant to Section 393.170 should require Commission approval of the acquisition/construction of plant if it is to be included in the utility's Missouri rate base even if the plant is to be located in a state other than Missouri. Dogwood correctly identifies the Crossroads facilities as being in Mississippi and the Riverton facilities as being in Kansas. The LaCygne generating station, the Jeffrey Energy Center, and the Wolf Creek nuclear station are in Kansas. The Staff has not identified any Section 393.170 CCN related Commission cases for generating units outside the state of Missouri built or acquired by investor-owned electrical corporations with retail service territory in Missouri, other than possibly the very short-lived Case No. 17,754, In the matter of KCP&L proposed nuclear power plant.

24. On April 10, 1973, the Commission issued an *Order and Notice of Hearing* in Case No. 17,754. The *Order and Notice of Hearing* stated that on or about February 21, 1973 KCP&L announced plans to build a nuclear power plant in Coffey County, Kansas as a joint project with Kansas Gas and Electric Company. The Commission said that an investigation needed to be conducted to determine whether it was in the public interest that such plant be built outside KCP&L's service territory and that there were many questions regarding the out-state location. The Commission provided a list of questions it wanted addressed at an April 16, 1973 hearing. On May 2, 1973, the Commission issued a three page Report And Order stating that "the Commission is of

the opinion that the investigation herein should be discontinued and said cause dismissed." KCP&L did not seek a CCN for the construction of Wolf Creek and the Commission did not require a CCN for the construction of Wolf Creek.

Recent Commission CCN Cases

25. In the last few years Missouri electrical corporations have applied for CCNs relating to a number of renewable energy resource projects. Dogwood's view of these cases is not necessarily clear. Of these cases, possibly the most interesting case is File No. EA-2011-0368 because of the discussion in the Commission's Order Granting Certificate Of Convenience And Necessity. On May 6, 2011, KCP&L, pursuant to Section 393.170, filed an application in File No. EA-2011-0368, for a CCN authorizing it to acquire, construct, install, own, operate, maintain, and otherwise control and manage a group of new distributed small soar energy electrical production facilities to be built primarily on roof-tops of schools, commercial facilities, and residences in KCP&L's SmartGrid Demonstration Project Area in Kansas City, Missouri. In an amendment to its application, KCP&L was able to specify the installation location of two solar facilities comprising 105 kV. However, at the time of the issuance of the Commission's Order Granting Certificate Of Convenience And Necessity, KCP&L had not yet determined the exact location of 75 kW of the 180 kW it planned to install. The Commission issued a CCN for the full 180 kW requested despite concerns of the Staff respecting the import of the *StopAquila.Org* decision reasoning as follows in the Order Granting Certificate Of Convenience And Necessity:

> After reviewing the applicable decisions and statutes, as well as the facts described in KCPL's application, the Commission concludes that Staff's interpretation is overly restrictive. The purpose of the statutory requirement is to ensure that the public interest is protected. In the South Harper case the public interest concerned placement of a natural gas-fired turbine electrical generating plant that could potentially disrupt a residential neighborhood without regard to local zoning requirements. In this case, the public interest concerns placement of solar arrays on a few buildings, subject to local building permits and in a way that does not implicate local zoning requirements.
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> In granting KCPL a certificate of convenience and necessity, the Commission is approving the overall project to install small solar production facilities within the SmartGrid Demonstration Project area. Additional Commission approval is not required after KCPL determines precisely on which buildings to install those small solar facilities. However, the Commission will direct KCPL to file a list of the specific locations at which small solar production facilities have been installed after that information is available.

26. Presently pending before the Commission is a CCN application of Ameren Missouri in File No. EA-2014-0136, pursuant to Section 393.170, to construct, install own, operate, maintain, and otherwise control and manage solar generation facilities in O'Fallon, Missouri as part of its strategy to comply with Missouri's Renewable Energy Standard, specifically that portion of renewable energy required to come from solar energy.

27. On January 19, 2010, AmerenUE, pursuant to Section 393.170, filed an application in File No. EA-2010-0216 for a CCN authorizing it to acquire, construct, install, own, operate, maintain, and otherwise control and manage a new electrical production facility in the Village of Champ, Missouri and a related substation in the City of Maryland Heights, Missouri, which will be fueled with a renewable source of energy, landfill gas from the Fred Weber Landfill at 5000 Earth City Expressway, St. Louis County. The electrical production facility will consist of three gas-fired combustion

turbine generator units, each with a nameplate capacity of approximately 5 megawatts, for a total plant capacity of approximately 15 megawatts. The project is within AmerenUE's existing certificated service territory. The Commission issued a CCN to AmerenUE on May 12, 2010 in File No. EA-2010-0216.

28. On December 7, 2010, KCP&L Greater Missouri Operations Company ("GMO") pursuant to Section 393.170 filed an application in File No. EA-2011-0165 for a CCN authorizing it to acquire, construct, install, own, operate, maintain, and otherwise control and manage a new electrical production facility to be built near St. Joseph, Missouri which would be fueled with a renewable energy resource, landfill gas from the City of St. Joseph Landfill at 9431 50th Road Southeast, St. Joseph, Missouri. The new electrical production facility, which would be built adjacent to the landfill, would consist of one gas-fired internal combustion generator unit of approximately 1.6 megawatts. On February 14, 2011, the Commission issued an Order Granting Certificate Of Convenience And Necessity to GMO finding and concluding that the facilities described in the application are necessary and convenient for the public service.

29. Also presently pending before the Commission is File No. EA-2012-0281, In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage A Utility Waste Landfill and Related Facilities at its Labadie Energy Center. The application for a CCN, filed on January 24, 2013 pursuant to Section 393.170, more specifically, seeks Commission permission and approval to expand the boundaries of its Labadie Energy Center, which consists of four coal-fired steam generating units and

related facilities, so that it can replace the site's existing waste impoundments (commonly referred to as ash ponds), construct and operate a utility waste landfill and conduct other plant related operations at the site.

WHEREFORE the Staff recommends to the Commission that pursuant to Commission Rule 4 CSR 240-2.180 Rulemaking it initiate the rulemaking as requested by Dogwood in its petition filed on January 8, 2018 in accordance with Section 536.041 RSMo (Supp. 2012), and structure the rulemaking so that there is a comment period and a reply comment period before the legislative type hearing that the Commission holds.

Respectfully submitted,

/s/ Steven Dottheim
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Staff Response To Commission Order* have been transmitted electronically to the Office of the Public Counsel and all entities/persons submitting comments in response to the Commission's January 8, 2014 *Order Directing Staff To Investigate And File Recommendation* this 14th day of February, 2014.

/s/ Steven Dottheim