

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 13th
day of February, 2020.

In the Matter of the Application of Citizens)	
Electric Corporation for an Order)	File No. EM-2019-0212
Authorizing the Sale of Certain Electric)	
Transmission Facilities)	

**ORDER APPROVING STIPULATION AND AGREEMENT
AND AUTHORIZING THE SALE OF CERTAIN ELECTRIC
TRANSMISSION FACILITIES**

Issue Date: February 13, 2020

Effective Date: March 14, 2020

On June 25, 2019, Citizens Electric Corporation (Citizens) filed an application with the Missouri Public Service Commission (Commission) seeking a finding that the Commission lacks jurisdiction, or alternatively for approval of a sale of certain electric transmission facilities.

The Commission directed notice of the filing and set an intervention deadline. On October 15, 2019, the Staff of the Commission (Staff) filed its recommendation. Staff recommended the Commission approve the sale, with certain conditions on both Citizens and the purchaser, an Indiana corporation, Wabash Valley Power Association, Inc. (Wabash). Wabash then intervened.

On January 22, 2020, Citizens, Staff, and Wabash filed a *Stipulation and Agreement* that resolves all issues. Commission rules provide that a non-unanimous stipulation and agreement can be treated as unanimous if no party objects within seven days. The other party to the case, the Office of the Public Counsel, did not sign the *Stipulation and*

Agreement, but did not object, and no other objections were received. Accordingly, the Commission will treat the *Stipulation and Agreement* as unanimous.

The *Stipulation and Agreement* sets forth three main conditions, with two of the conditions further divided into sets. The first condition is based on the responsibilities of Citizens outlined in both the purchase agreement and operation agreement. It is a set of seven contained in paragraph 4 of the *Stipulation and Agreement*, and requires Citizens to file informational notices if and when in-house steps are taken by Citizens counter to its continuing responsibilities as a public utility (e.g. Citizens' retention of its certificate of convenience and necessity; Citizens' retention of ownership of the underlying real estate; Citizens' continuing operations and maintenance of the subject electric transmission facilities).

The second condition set, at the end of paragraph 4, requires Citizens to comply with Commission rules that relate to reporting and safety requirements. The third condition, in paragraph 5 of the *Stipulation and Agreement*, requires Wabash to file notice at least 60 days in advance of the sale of all or part of the transmission facilities that are part of this transaction to an entity other than Citizens.

The Commission has jurisdiction over this transaction under Section 393.190 RSMo (2016), governing transfers of utility property. For purposes of this case, the Commission makes no conclusions about the extent of its general jurisdiction over Citizens or Wabash. The test the Commission applies to proposed transfers of utility property was set forth by the Missouri Supreme Court as the "not detrimental to the public" standard.¹

¹ *State ex rel. City of St. Louis v. Public Service Comm'n of Missouri*, 73 S.W.2d 393, 400 (Mo. banc 1934).

Citizens' statement in its application that the transaction is not detrimental to the public interest is uncontested. The Commission agrees that the transaction is not detrimental due to the unique ownership relationship between Citizens and Wabash. Citizens is a member of Wabash, and thus partial owner. As a partial owner, Citizens has input on the governance of Wabash, including the property being sold. The sale is also not detrimental to the public interest as it would have no substantive or negative affect on Citizens' operations and daily business.

After reviewing the *Stipulation and Agreement*, Citizens' application, and information presented by the parties, the Commission finds and concludes that the *Stipulation and Agreement* is a reasonable resolution of the issues it addresses and should be approved. The Commission further finds that the sale of certain electric transmission facilities is not detrimental to the public, and shall be approved.

THE COMMISSION ORDERS THAT:

1. The *Stipulation and Agreement* filed on January 22, 2020, is approved as a resolution of all issues addressed in that document. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the *Stipulation and Agreement* is attached to this order and is incorporated by reference.
2. Citizens Electric Corporation's application for the sale of certain electric transmission facilities, as described in its application, is approved subject to the conditions set forth in the *Stipulation and Agreement*.
3. This order shall be effective on March 14, 2020.



BY THE COMMISSION

A handwritten signature in dark ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Hatcher, Regulatory Law Judge

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

In the Matter of the Application of Citizens Electric)	
Corporation for an Order Authorizing the Sale)	<u>File No. EM-2019-0212</u>
of Certain Electric Transmission Facilities)	

STIPULATION AND AGREEMENT

COME NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through Staff Counsel's Office, Citizens Electric Corporation ("Citizens"), and Wabash Valley Power Association, Inc. ("Wabash"), collectively referred to herein as the "Signatories," and hereby submit this Stipulation And Agreement ("Agreement") for approval by the Missouri Public Service Commission ("Commission"). In support thereof, the Signatories state as follows:

1. On June 25, 2019, Citizens filed its Application For Order Authorizing Sale Of Certain Electric Transmission Facilities Or, In The Alternative, An Order Dismissing This Application For Lack Of Jurisdiction ("Application"). Citizens entered into the Facility Purchase Agreement for the sale of its 34.5 kV, 69 kV, and 138 kV transmission lines, substation equipment and other related items ("Transmission Facilities") comprising the transaction in question on September 27, 2018, to Wabash, a generation and transmission cooperative organized under the Indiana nonprofit corporation act with its principal offices located at 6702 Intech Blvd., Indianapolis, Indiana 46278. Citizens stated in its Application that the sale of the Transmission Facilities to Wabash was not detrimental to the public interest in part because it would have no substantive or negative affect on Citizens operations and daily business due to several unique and favorable terms and conditions with Wabash which Citizens enumerated. On October 15, 2019, Staff filed a pleading with the Commission recommending that the Commission accept

the transmission facilities transaction as being not detrimental to the public interest with conditions for Citizens and Wabash.

2. Wabash was not a party to Citizens' Application. On June 26, 2019, the Commission issued an Order Directing Notice, Setting Deadline For Intervention Requests, And Directing Filing Of Staff Recommendation. Among other things, the Commission directed that no later than July 11, 2019, any person wishing to intervene in this matter shall file an application to intervene. No applications to intervene were filed by July 11, 2019. On October 25, 2019, Wabash filed a Motion To Intervene in this proceeding stating in part that it was filing its Motion To Intervene in response to Staff's October 15, 2019, Recommendation, which was filed after the intervention deadline. On November 4, 2019, Staff filed Staff Response To Motion Of Wabash Valley Power Association, Inc. To Intervene in which Staff stated it did not oppose Wabash's late-filed Motion To Intervene.

3. Staff and Citizens have reached a Stipulation And Agreement which addresses in particular Citizens' part of the Transmission Facilities transaction regarding meeting the "not detrimental to the public interest" standard without referring to jurisdiction. The Stipulation And Agreement involves in part what Citizens refers to as several unique and favorable terms and conditions with Wabash, which Citizens enumerated in its Application, Facility Purchase Agreement with Wabash and in its Operation, Maintenance, System Planning And Design Agreement with Wabash, which conditions are identified in paragraph 4, items a. – g. below. Citizens agrees, in paragraph 4 below, to file an informational notice with the Commission if it decides not to exercise with Wabash any one of the unique and favorable terms and conditions as further set

forth and detailed in paragraph 4 below. The other conditions identified in paragraph 4 below involve Citizens / Wabash agreeing to certain Commission Rule reporting requirements and applying certain safety standards.

4. Citizens has agreed to make a filing by an attorney in the Commission's Electronic Filing and Information System ("EFIS") providing informational notice to the Commission that Citizens has commenced taking steps in-house that it is moving towards:

- a. Not retaining a Commission-issued certificate of public convenience and necessity ("CCN")¹;
- b. Not retaining its ownership of all underlying real estate associated with the transmission facilities transferred in the Facility Purchase Agreement, including any additions, upgrades, and replacements²;
- c. Not seeking to require that Wabash obtain Citizens' prior written consent before selling to a third-party the Transmission Facilities including any additions, upgrades, and replacements.³;
- d. Not exercising its absolute, unconditional right to repurchase transmission facilities addressed in the Facility Purchase Agreement including any additions, upgrades, and replacements upon 180 days written notice to Wabash⁴;
- e. Not retaining the right to construct, own and operate future transmission facilities⁵;
- f. Not continuing to perform, per the Operation, Maintenance, System Planning And Design Agreement with Wabash, operation, maintenance, system planning, and design services for the Transmission Facilities in

¹ Provision for Citizens' retention of CCNs is contemplated in the Facility Purchase Agreement.

² Provision for Citizens' retention of the real estate associated with the transmission facilities transferred in the Facility Purchase Agreement is contemplated in the Facility Purchase Agreement.

³ See Section 15.A. in the Facility Purchase Agreement.

⁴ See Section 15.B. in the Facility Purchase Agreement.

⁴ See Section 15.B. in the Facility Purchase Agreement.

⁵ See Section 3.2. in the Operation, Maintenance, System Planning And Design Agreement.

the Facility Purchase Agreement including any additions, upgrades, and replacements to ensure it provides safe and reliable service⁶; and

- g. Ceasing to be a member of Wabash, and not purchase all of the transmission facilities addressed in the Facility Purchase Agreement including any additions, upgrades, and replacements, and any additional sole-use transmission lines and substations located in the state of Missouri and owned by Wabash serving Citizens⁷.

The notice will be filed in EFIS as public information or as “Confidential” information under Commission Rule 20 CSR 4240-2.135 so long as a “protective order” is applied for by Citizens pursuant to 20 CSR 4240-2.135(3). If Citizens enters into a future agreement whereby a currently held CCN is not retained as contemplated by item 4.a. above, a Commission Order authorizing the transfer of the CCN would be required. Also, if by the terms of a future agreement, Citizens does not retain ownership of all the real estate underlying the Transmission Facilities transferred to Wabash, as contemplated in item 4.b. above, a Commission Order authorizing the transfer of the real estate would be required. Citizens shall be responsible for satisfying the requirements of 20 CSR 4240-3.190(4), (5), and (6)⁸, and the incident / electrical safety reporting requirement and standards addressed in 20 CSR 4240-18.010.

5. Staff and Wabash have reached a Stipulation And Agreement which addresses in particular the Wabash part of the Transmission Facilities transaction

⁶.See Section 10.A.vi. and B.iii. in the Facility Purchase Agreement, and Recitals, page 1 and Article IV of the Operation, Maintenance, System Planning And Design Agreement.

⁷ See Section 15.C. in the Facility Purchase Agreement.

⁸ Agreement For Assignment Of Responsibility For Complying With Certain Reliability Standards (Amended And Restated) addresses reliability responsibilities between Citizens and Wabash. See Section 10.C.iii. in the Facility Purchase Agreement.

regarding meeting the “not detrimental to the public interest” standard without referring to jurisdiction. Wabash has agreed to make a filing in EFIS by an attorney providing notice no less than sixty (60) days before the effective date of a sale agreement in which the sale of all or part of the Transmission Facilities addressed in the Facility Purchase Agreement including any additions, upgrades, and replacements, and any additional sole-use transmission lines and substations located in the state of Missouri and owned by Wabash serving Citizens, to an entity other than Citizens. The notice will be filed in EFIS as public information or as “Confidential” information under Commission Rule 20 CSR 4240-2.135 so long as a “protective order” is applied for by Wabash pursuant to 20 CSR 4240-2.135(3). Also, Wabash consents and authorizes Citizens to comply with the reporting requirements of Commission Rules 20 CSR 4240-3.190(4), (5), and (6) and 20 CSR 4240-18.010 on its behalf so long as the Operation, Maintenance, System Planning And Design Agreement and Agreement For Assignment Of Responsibility For Complying With Certain Reliability Standards (Amended And Restated) are in effect.

GENERAL PROVISIONS

6. This Agreement is being entered solely for the purpose of settling this docket. Unless explicitly agreed otherwise herein, none of the Signatories shall be deemed to have approved or acquiesced in any question of Commission jurisdiction, authority, procedural principle, utility safety matter, or utility reliability matter that may be purported to underlie this Agreement. Except as explicitly provided herein, none of the Signatories shall be bound or prejudiced in any manner by the terms of this Agreement in this or any other proceeding.

7. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has to a hearing on the matters presented by the Agreement, regarding cross-examination or a decision in accordance with Section 536.080.1 RSMo. 2016 or Art. V, Section 18 Mo. Const. The Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that may have been offered or received in support of or in opposition to this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions, and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

8. To assist the Commission in its review of this Agreement, the Signatories also request that the Commission advise them of any additional information that the Commission may desire from the Signatories related to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission, for the purpose of the Commission acting on this Agreement.

9. The Staff also shall provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests. The Staff shall, to the extent reasonably practicable, provide the other Signatories with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The

Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

10. Except as specified herein, the Signatories to the Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding, should the Commission decide not to approve the Agreement or in any way condition its approval of the same, except as stated herein. Because this is an Agreement for the purpose of settling matters in this case, it shall not be cited as precedent or referred to in testimony in any subsequent or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

11. The provisions of this Agreement have resulted from extensive discussions and negotiations among the Signatories and are interdependent and non-severable. If the Commission does not approve this Agreement unconditionally and without modification, or if the Commission approves the Agreement with modifications or conditions to which a Signatory objects, then this Agreement shall be void and none of the Signatories shall be bound by any of the agreements or provisions hereof.

12. In the event the Commission accepts the specific terms of this Agreement, the Signatories waive their respective rights: a) to cross-examine witnesses pursuant to Section 536.070(2) RSMo.; b) to present oral argument and written briefs pursuant to Section 536.080.1 RSMo.; c) to the reading of the transcript by the Commission pursuant

to Section 536.080.2 RSMo.; d) to rehearing pursuant to Section 386.500 RSMo.⁹; and d) to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Order respecting this Agreement issued in this proceeding approving this Agreement unconditionally and without modification, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

13. This Agreement contains the entire agreement of the Signatories concerning the matters addressed herein.

14. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigatory powers or other statutory powers which the Commission presently has. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information.

15. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

16. The Signatories have communicated with the Office of the Public Counsel and the Office of the Public Counsel has stated that it takes no position on this matter.

⁹ Staff does not have the right to rehearing.

WHEREFORE, the Signatories represent that the terms of the Stipulation And Agreement constitute a fair and reasonable resolution of the issues addressed herein, in a manner that is not detrimental to the public interest. The Signatories respectfully request the Commission approve the Stipulation And Agreement subject to its specific terms and conditions as a full and complete resolution of File No. EM-2019-0212.

Respectfully submitted,

/s/ Andrew J. Sporleder

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ATTORNEY FOR STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record in File No. EM-2019-0212 this 22nd day of January, 2020.

/s/ Jamie S. Myers

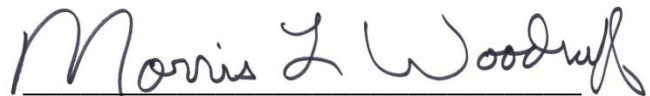
STATE OF MISSOURI

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 13th day of February 2020.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 13, 2020

File/Case No. EM-2019-0212

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Commission**

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

Sincerely,



**Morris L. Woodruff
Secretary**

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