

**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)
of Certain Electric Transmission Facilities) **File No. EM-2019-0212**

**STAFF RESPONSE TO CITIZENS ELECTRIC CORP.'S RESPONSE TO STAFF
OF MISSOURI PUBLIC SERVICE COMMISSION'S RECOMMENDATION AND
STAFF REQUEST FOR AN EARLY PREHEARING CONFERENCE**

COMES NOW the Missouri Public Service Commission Staff ("Staff"), by and through Staff Counsel's Office, and files its response to the October 23, 2019, Citizens Electric Corporation's Response To Staff Of Missouri Public Service Commission's Recommendation ("Response"). In support thereof, Staff states as follows:

1. In Paragraph 4, on pages 1-2 of Citizens' Response, Citizens states what it understands are the conditions proposed by Staff. The last of these conditions is not necessarily a condition for Citizens but a condition for Wabash Valley Power Association, Inc. ("Wabash"). Citizens' Response repeats the proposed condition correctly in Paragraph 4.c. on page 2 of its Response (developed by Staff when Wabash was not an intervenor or otherwise a party to the instant case), and then in Paragraph 7, on page 3 of its Response, Citizens "agrees" to the Staff's proposed condition, but does not correctly state what the Staff's proposed condition is. Citizens states the condition as:

Regarding the pre-condition set forth above in paragraph 4.c., Citizens has been provided with a written commitment from Wabash Valley to satisfy said pre-condition by way of an amendment to the Facility Purchase Agreement dated September 27, 2018. The amended agreement would provide that if Citizens notifies the Commission that it is considering the question of whether to authorize the sale by Wabash Valley of the Property purchased by Wabash on December 26, 2018 pursuant to the Facility Purchase Agreement dated September 27, 2018 to a third party, Wabash Valley will commit to Citizens that it will contemporaneously provide a copy to the Commission of any such written request made by Wabash Valley to Citizens.

The above is in part an incorrect restatement of what is shown as the condition in Paragraph 4.a.iii. on page 1 of Citizens' Response. The Staff condition is 4.c. which includes after there is no longer any condition pursuant to the Facilities Purchase Agreement that Wabash first offer the facilities to Citizens for purchase, Paragraph 4.a.iii., and after the conditions of Paragraphs 4.a.iv. and vii. on pages 1-2 of Citizens' Response, and Wabash still holds the transmission facilities it purchased from Citizens 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.

2. Wabash has filed a Motion For Intervention which Staff does not oppose. If the Commission grants intervention to Wabash and decides to determine whether it has jurisdiction over Wabash, including future activities or not,¹ it would be Staff's position, under these changed circumstances, that should the Commission find that it has jurisdiction over Wabash, then the Commission should direct Wabash to file with the Commission and not just agree to advise the Commission that it is considering selling to a third party the transmission facilities it purchased from Citizens 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.

3. In paragraph 1 above, Staff notes that Citizens states in Paragraph 4, on pages 1-2 of Citizens' Response, what it understands are the conditions proposed by Staff. Citizens relates at the bottom of page 1 that part of the conditions as understood

¹ Staff addresses in paragraphs 7 and 8 of its Staff Response To Response Of Wabash Valley Power Association, Inc. To Staff Recommendation the unlawfulness of the Commission rendering decisions on hypothetical, not presently existing situations, i.e., advisory opinions.

by Citizens involve the Commission directing Citizens to file with the Commission and advise the Commission that Citizens is considering whether to take certain actions.

4. At page 3, paragraphs 9 and 10 Citizens rejects agreeing to file with and advise the Commission that it is considering whether to take certain actions regarding the transmission facilities it sold and transferred to Wabash in 2018.² Citizens states in Paragraph 9 that it believes that the Commission's October 19, 2004, Order Canceling Tariff Sheets in Case No. ED-2004-0223 directing Citizens to provide the Staff and Public Counsel reasonable advance notice of any fundamental change that it intends to make in the operations of Citizens, including any transactions specified in Section 393.190.1, RSMo., is controlling and Citizens reasonably relied upon the Commission's October 19, 2004, Order Canceling Tariff Sheets in Case No. ED-2004-0223.

5. The Facility Purchase Agreement is dated September 27, 2018. Citizens provided through a letter dated November 26, 2018, to the General Counsel to the Commission and the General Counsel to the Office of the Public Counsel notice of a decision made, i.e., the sale of the electric transmission facilities, which closed on December 26, 2018, not notice of an action being considered. The procedure that Citizens proposes to continue to maintain is not adequate. As the Commission is well aware, it is not bound by *stare decisis*.³ Also, Citizens has not detrimentally relied on a prior decision of the Commission.⁴

² 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.

³ "The PSC 'is not bound by *stare decisis*' based on prior administrative decisions, so long as its current decision is not otherwise unreasonable or unlawful. See *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003)." *State ex rel. Praxair, Inc. v. Public Serv. Comm'n*, 328 S.W.3d 329, 340 (Mo.App. W.D. 2010).

⁴ *State ex rel. Capital City Water Co. v. Public Serv. Comm'n*, 850 S.W.2d 903 (Mo.App. W.D. 1993).

6. Staff hereby requests that the Commission issue an Order Setting An Early Prehearing Conference for the purpose of setting a procedural schedule to address the issues set out above as necessary in this proceeding.

WHEREFORE Staff requests that the Commission make no determinations at this point other than (1) as requested herein; (2) as requested in Staff Response To Motion of Wabash Valley Power Association, Inc. To Intervene; and (3) as requested in Staff Response To Response Of Wabash Valley Power Association, Inc. To Staff Recommendation. Staff requests the Commission issue an Order Setting An Early Prehearing Conference for the purpose of setting a procedural schedule to address the issues set out above as necessary in this proceeding.

Respectfully submitted,

/s/ Steven Dottheim

Steven Dottheim, Mo. Bar No. 29149
Chief Deputy Staff Counsel
E-mail: steve.dottheim@psc.mo.gov
Phone: 573-751-7489
Fax: 573-751-9285

Jamie S. Myers, Mo. Bar No. 68291
Legal Counsel
E-mail: jamie.myers@psc.mo.gov
Phone: 573-526-6036
Fax: 573-751-9285

Attorneys for Staff of the
Missouri Public Service Commission
P. O. Box 360
200 Madison St., Ste. 800
Jefferson City, MO 65102

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Staff Response To Commission Order Directing Filing has been transmitted electronically to all counsel of record this 4th day of November, 2019.

/s/ Steven Dottheim