

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

In the Matter of the Application of Transource)
Missouri, LLC for a Certificate of Convenience)
and Necessity Authorizing it to Construct, Finance,) File No. EA-2013-0098
Own, Operate and Maintain the Iatan-Nashua and)
Sibley-Nebraska City Electric Transmission Projects)

In the Matter of the Application of Kansas City)
Power & Light Company and KCP&L Greater)
Missouri Operations Company for Approval To) File No. EO-2012-0367
Transfer Certain Transmission Property to)
Transource Missouri, LLC and for)
Other Related Determinations)

**SECOND JOINT PROPOSED ORDER AND
JOINT PROPOSED CONSENT ORDER APPROVING
UNANIMOUS STIPULATION AND AGREEMENT**

Transource Missouri, LLC (“Transource Missouri”),¹ Kansas City Power & Light Company (“KCP&L”), KCP&L Greater Missouri Operations Company (“GMO”)² (collectively, the “Applicants”), the Staff of the Missouri Public Service Commission (“Staff”), and the Office of the Public Counsel (“OPC”) (collectively, the “Signatories”) file this Second Joint Proposed Order and Joint Proposed Consent Order Approving the Unanimous Stipulation and Agreement³ pursuant to the oral directive of Regulatory Law Judge Jordan, indicated at the behest of the Commissioners, at the July 2, 2013 conference with the Signatories. The proposed form of the order would begin as follows:

The Missouri Public Service Commission (“Commission”) is:

- Approving the disposition of these cases by settlement by Transource Missouri, LLC (“Transource Missouri”),⁴ Kansas City Power & Light Company (“KCP&L”),

¹ Transource Missouri is the Applicant in File No. EA-2013-0098.

² KCP&L and GMO are the Applicants in File No. EO-2012-0367.

³ Intervenor Missouri Industrial Energy Consumers (“MIEC”) is not a signatory to the Stipulation or to its First Amendment. However, MIEC neither opposed nor timely objected to the Stipulation or the First Amendment. Because the Commission may treat the Stipulation and the First Amendment as unanimous under 4 CSR 240-2.115(2)(C), they are collectively referred to as a Unanimous Stipulation and Agreement.

⁴ Transource Missouri is the Applicant in File No. EA-2013-0098.

KCP&L Greater Missouri Operations Company (“GMO”)⁵ (collectively, the “Applicants”), the Staff of the Missouri Public Service Commission (“Staff”), and the Office of the Public Counsel (“OPC”) (collectively, the “Signatories”) because disposition by settlement is in the public interest; and

- Incorporating the provisions of the *Non-Unanimous Stipulation and Agreement* and the *First Amendment to Non-Unanimous Stipulation and Agreement* into this order.⁶

This order does not determine whether any item agreed to by the Signatories, but which has not yet been filed by Applicants at the Commission supports safe and adequate service at just and reasonable rates, or the merits of any claim or defense, including without limitation, whether any violation of statute or Commission tariff, regulation, or order occurred.

I. ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT.

A. Background and Findings.

On August 31, 2012, KCP&L and GMO (“Companies”), pursuant to Section 393.190,⁷ 4 CSR 240-2.060, and 4 CSR 240-3.110, submitted their application in File No. EO-2012-0367 (“Transfer Application”) for authority to transfer certain transmission property and for other related determinations regarding two regional, high-voltage, wholesale transmission projects approved by Southwest Power Pool, Inc. (“SPP”) known as the Iatan-Nashua 345kV transmission project (“Iatan-Nashua Project”) and the Sibley-Nebraska City 345kV transmission project (“Sibley-Nebraska City Project”) (collectively, the “Projects”). The other related determinations which the Applicants requested in the Transfer Application are that the Commission find that no approval under state law is required to terminate, release, and novate the SPP Notifications to Construct (“NTCs”) regarding the Projects, or otherwise express no objection to or approve the Applicants’ plans in such regard, and that the Commission grant a waiver or variance of its Affiliate Transactions Rule (“Rule”), 4 CSR 240-20.015, for

⁵ KCP&L and GMO are the Applicants in File No. EO-2012-0367.

⁶ These stipulations may now be treated as unanimous. See n. 15, infra.

⁷ All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

transactions between KCP&L and GMO, on the one hand, and Transource and its regulated utility subsidiaries, on the other.⁸ The Staff and OPC asserted that the NTCs are assets, and that Transource subsidiaries are not rate regulated by the Missouri Commission and are not “regulated utility subsidiaries.”⁹

The Companies submitted Direct Testimony along with and in support of their Transfer Application on August 31, 2012.¹⁰ In response to the Commission’s April 12, 2013 Order Directing Filing, the Companies supplemented the Transfer Application on April 12 and April 18, 2013 by listing each county in which any part of any political subdivision affected by the proposed transfer is located.

Under the Transfer Application, the property that the Companies requested be transferred to Transource Missouri is property of GMO. KCP&L and GMO previously requested and received authorization from the Commission to transfer at cost from KCP&L to GMO certain transmission property owned and operated by KCP&L between GMO’s Alabama Substation and KCP&L’s Nashua Substation (“Alabama-Nashua Line”). See In re Application of Kansas City Power & Light Co. to Transfer Certain Assets to KCP&L Greater Missouri Operations Co., Case No. EO-2012-0479, Order Granting Application for Transfer of Assets at 3 (Aug. 15, 2012). The southern portion of the Alabama-Nashua Line will be retired and removed, and the corridor will be used to construct the East Segment of the Iatan-Nashua Project. The remaining portion of this existing 161kV line, which runs to GMO’s Alabama Substation near St. Joseph, Missouri, will remain the property of GMO and is not to be transferred. This line will continue intact and energized at 161kV as a radial line and will not be a part of the new 345kV facilities.

⁸ Ives Direct (Ex. 9) at 23-27; Ives Surrebuttal (Ex. 10) at 24-30.

⁹ Hyneman Rebuttal (Staff Ex. 2) at 26-28, 49-53; Kind Rebuttal (OPC Ex. 2) at 12-17.

¹⁰ KCP&L and GMO filed the Direct Testimony of Darrin R. Ives (Ex. 9), Todd E. Fridley (Ex. 8), and Brent C. Davis (Ex. 5).

The Companies requested authorization to transfer at cost certain transmission property¹¹ to Transource Missouri, which is a wholly-owned subsidiary of Transource Energy, LLC (“Transource”). Transource was established by Great Plains Energy Incorporated (“GPE”), the Companies’ parent corporation, and American Electric Power Company, Inc. (“AEP”) to build wholesale regional transmission projects within SPP, as well as other regional transmission organizations.

Simultaneous with the filing of the Companies’ Transfer Application, on August 31, 2012, Transource Missouri (with the Companies, referred to as “Applicants”), pursuant to Section 393.170.1, 4 CSR 240-2.060, and 4 CSR 240-3.105, submitted its application for a line Certificate of Convenience and Necessity (“CCN”) to construct, finance, own, operate, and maintain the regional Projects (“CCN Application”). Transource Missouri submitted Direct Testimony with its CCN Application, which was docketed as File No. EA-2013-0098.¹²

The Commission issued Orders directing notice of the applications on September 5, 2012, September 18, 2012, and April 22, 2013. On October 9, 2012, the Commission granted the motion to intervene of MIEC. The Commission consolidated the Transfer Application and CCN Application proceedings on November 7, 2012, designating File No. EA-2013-0098 as the lead case. On January 30, 2013, Staff and OPC filed Rebuttal Testimony,¹³ and on March 6, 2013,

¹¹ Davis Direct (Ex. 5) at 6, 8; Ives Direct (Ex. 9) at 16-18, 25.

¹² Transource Missouri filed the Direct Testimony of Antonio P. Smyth (Ex. 14), Lisa M. Barton (Ex. 1), Michael L. Deggendorf (Ex. 6), Scott P. Moore (Ex. 12), and Brent C. Davis (Ex. 4).

¹³ Staff filed the Rebuttal Testimony of Charles R. Hyneman (Staff Ex. 2), Alan J. Bax (Staff Ex. 1), Michael L. Stahlman (Staff Ex. 4), and David Murray (Staff Ex. 3). OPC filed the Rebuttal Testimony of Ryan Kind (OPC Ex. 1-2).

the Applicants and OPC filed Surrebuttal Testimony.¹⁴ On March 26, 2013, the Commission issued a notice of contested case.

An evidentiary hearing was originally scheduled for April 2-4, 2013, but was postponed at the request of the parties until April 16-18, 2013 to enable the parties to continue settlement negotiations. On April 10, 2013 the parties requested that the Commission suspend the evidentiary hearing, as they had reached a settlement in principle.

On April 12, 2013 the Signatories filed a Non-Unanimous Stipulation and Agreement (“Stipulation”) that purports to resolve all disputed issues among the Signatories. Intervenor MIEC, while not a signatory to the Stipulation, did not oppose or timely object to it, and the Stipulation may be treated as unanimous.¹⁵ The April 12, 2013 Stipulation contains a series of agreements between the Signatories, including agreement that the Commission should conditionally grant the relief requested in the Transfer Application filed by KCP&L and GMO in File No. EO-2012-0367 and conditionally grant the relief requested in the CCN Application filed by Transource in File No. EA-2013-0098.¹⁶

The conditions agreed to by the Signatories are contained in Section II of the Stipulation. They concern the rate treatment to be afforded the Projects in Missouri, the application of and certain waivers of the Affiliate Transactions Rule, future operations of the Applicants, reporting requirements, access to books and records, and the conditional approval of the Applications.

¹⁴ Applicants filed the Surrebuttal Testimony of Jerald R. Boteler, Jr. (Ex. 2), Kevin E. Bryant (Ex. 3), Michael L. Deggendorf (Ex. 7), Darrin R. Ives (Ex. 9), Charles J. Locke (Ex. 11), Scott P. Moore (Ex. 13), and Antonio P. Smyth (Ex. 15). OPC filed the Surrebuttal Testimony of Ryan Kind (OPC Ex. 3-4).

¹⁵ Intervenor Missouri Industrial Energy Consumers (“MIEC”) is not a signatory to the Stipulation or to its First Amendment. However, MIEC neither opposed nor timely objected to the Stipulation or the First Amendment. Because the Commission may treat the Stipulation and the First Amendment as unanimous under 4 CSR 240-2.115(2)(C), they are collectively referred to as a Unanimous Stipulation and Agreement.

¹⁶ See Stipulation, Section II at 4.

The Commission convened a hearing on that Stipulation on April 16, 2013 at which the Applicants, Staff, and OPC were present to answer questions. Subsequent to that hearing on April 29, the Commission issued an Order To File Proposed Amended Procedural Schedule (“April 29 Order”), in which it called upon the parties to propose a procedural schedule for the filing of an amended stipulation and agreement, and for further briefing, hearing, or a proposed report and order that would: (1) address how the Applicants have met their burden of proof; and (2) respond to Commission inquiries set forth in the Appendix to that Order as to whether the pending Non-Unanimous Stipulation and Agreement is in the public interest.

On May 6, 2013 the Signatories filed their Proposed Amended Procedural Schedule, as well as their First Amendment to Non-Unanimous Stipulation and Agreement (“First Amendment”). Intervenor MIEC, while not a signatory to the First Amendment, did not oppose or timely object to it.

On May 30, 2013 the Signatories filed a Joint Motion for Extension of Time. On May 31, 2013, the Commission issued an *Order Extending Time for Report and Order*.

On June 6, 2013 the Signatories filed a Joint Memorandum in Support of the Stipulation that stated how the Applicants have met their burden of proof for conditional approval, and responded to the Commission inquiries in the Appendix to the April 29 Order. The Signatories filed a Proposed Order Regarding the Unanimous Stipulation and Agreement that same day.

On June 27, 2013 the Applicants made a Supplemental Filing which advised the Commission that the final route for the Sibley-Nebraska City Project had been selected and publicly announced. Included in the filing were maps of the final route of the Sibley-Nebraska City Project. The Commission entered this information on the final route for the Sibley-Nebraska City Project into evidence by its July 10, 2013 First Order Supplementing Record.

The final route for the Sibley-Nebraska City Project has been selected and publicly announced. Nothing in the Stipulation restricts any Signatories' right to request reasonable additional notice, local public hearings, or additional processes in these cases and no Signatory is restricted from opposing such request to the Commission. KCP&L and GMO will provide the Commission with a report and information in File No. EA-2013-0098 within 90 days of the effective date of a Commission order approving the Stipulation outlining its public outreach efforts for siting, routing, easement acquisition and right-of-way acquisition for the Projects. KCP&L and GMO will update the report at least quarterly thereafter.

B. Conclusions of Law.

1. KCP&L and GMO are electrical corporations and public utilities, as defined in Section 386.020, and are subject to the general jurisdiction of the Commission under Section 393.140.¹⁷

2. Pursuant to Section 393.190.1, KCP&L and GMO must obtain permission from this Commission before they sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of their franchise, works or system, necessary or useful in the performance of their duties to the public.¹⁸

3. In determining whether to allow a utility to sell or transfer its property, the Commission must find that the proposed transfer will not be detrimental to the public interest.

The Missouri Supreme Court has stated:

The state of Maryland has an identical statute with ours, and the Supreme Court of that state . . . said: . . . It is not [the Public Service Commission's] province to insist that the public shall be *benefited*, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public *detriment*. 'In the public interest,' in such cases, can reasonably mean no more

¹⁷ Transfer Application, EFIS No. 4, pages 3-4, Paragraphs 7-8, File No. EO-2012-0367.

¹⁸ *Id.* at 1, 3, 12-14.

than ‘not detrimental to the public.’ [internal quotations omitted; emphasis added].¹⁹

Missouri courts have consistently applied the not detrimental standard since 1934,²⁰ and have recognized that “[t]he obvious purpose of [Section 393.190] is to ensure the continuation of adequate service to the public served by the utility.”²¹

4. In a decision approving the transfer of property from one utility to an affiliated utility, the Commission defined its role under Section 393.190:

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that [the utility] provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable.

The presence of detriments, thus defined, is not conclusive to the Commission’s ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.²²

Thus, the Commission stated in its Report and Order in Case No. EM-2007-0374²³ that detriment is determined by performing a balancing test involving not only service but also rates:

Consequently, the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or

¹⁹ State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. en banc 1934).

²⁰ See State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732 (Mo. en banc 2003).

²¹ State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

²² In re Union Elec. Co., Case No. EO-2004-0108, Report and Order on Rehearing at 49 (Feb. 10, 2005).

²³ In re Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Inc., Report and Order at 232, 2008 WL 2648913 at 92 (July 1, 2008), aff’d, State ex rel. Praxair, Inc. v. PSC, 344 S.W.3d 178 (Mo. en banc 2011).

adequate of [sic] service or that would tend to make rates less just or less reasonable. [footnote omitted].

5. Applying this analysis, the Commission has analyzed the potential benefits and detriments of the proposed transfer, and determines that the transfer is not detrimental to the public interest, subject to the conditions of Stipulation Paragraph 27.²⁴

6. Transource Missouri is a Delaware limited liability corporation qualified to conduct business in Missouri, with its principal place of business in Columbus, Ohio.

7. Pursuant to Section 393.170.1, Transource Missouri must obtain permission from this Commission before it may begin construction of electric plant.

8. In determining whether to grant a line CCN to an applicant, the Commission must determine whether the proposed construction is “necessary or convenient for the public service.”²⁵ Missouri courts have interpreted necessity to mean that the “additional service would be an improvement justifying its cost.”²⁶ Necessity does not require that the improvement be “essential” or “absolutely indispensable.”²⁷ Rather, “[i]f it is of sufficient importance to warrant the expense of making it, it is a public necessity.”²⁸ Moreover, if the granting of the authorization serves a genuine and reasonable public interest in promptness and economy of service, then the public “convenience or necessity” is served.²⁹

²⁴ See Transfer Application at 14-18; Ives Direct (Ex. 9) at 4-7, 13-21; Barton Direct (Ex. 1) at 8-11; Deggendorf Direct (Ex. 6) at 3-8; Moore Direct (Ex. 12) at 3-11; Smyth Direct (Ex. 14) at 7-8; Boteler Surrebuttal (Ex. 2) at 3-15; Bryant Surrebuttal (Ex. 3) at 3-22; Deggendorf Surrebuttal (Ex. 7) at 9-11, 14; Ives Surrebuttal (Ex. 10) at 6-23; Locke Surrebuttal (Ex. 11) at 3-35; Moore Surrebuttal (Ex. 13) at 1-12; Smyth Surrebuttal (Ex. 15) at 12-13; Stipulation Section II(A), II(B)(7).

²⁵ See Section 393.170.3. See also 4 CSR 240-3.105(1)(E).

²⁶ State ex rel. Intercon Gas, Inc. v. PSC, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993).

²⁷ Id.

²⁸ State ex rel. Missouri, Kan. & Okla. Coach Lines, Inc. v. PSC, 179 S.W.2d 132, 136 (Mo. App. K.C. 1944).

²⁹ State ex rel. Twehous Excavating Co. v. PSC, 617 S.W.2d 104, 106 (Mo. App. W.D. 1981).

9. The Commission has stated five criteria that it will use to determine that the proposed construction and operation is “necessary or convenient for the public service”:³⁰

- (1) There must be a need for the service;³¹
- (2) The applicant must be qualified to provide the proposed service;³²
- (3) The applicant must have the financial ability to provide the service;³³
- (4) The applicant’s proposal must be economically feasible;³⁴ and
- (5) The service must promote the public interest.³⁵

These criteria examine the qualifications of the applicant, as well as the project itself.

³⁰ In re Application of Entergy Arkansas, Inc. for a Certificate of Convenience and Necessity, Case No. EA-2012-0321, Order Granting Certificate of Convenience and Necessity at 2 (July 11, 2012).

³¹ There is a need for the service to be rendered by the Projects based upon studies performed by SPP in 2009 and 2010. These studies demonstrated that the Projects will improve electric grid reliability, minimize transmission congestion effects, bring economic benefits to SPP members, and help support public policy goals regarding renewable energy. The studies also demonstrated that the Projects will provide estimated benefits and savings that exceed the Projects’ estimated costs. See SPP Balanced Portfolio Report (June 23, 2009), attached as Ex. 6 to the CCN Application; SPP Priority Projects Phase II Final Report (Apr. 27, 2010), attached as Ex. 11 to the CCN Application. See also Fridley Direct (Ex. 8) at 21-27; Smyth Direct (Ex. 14) at 10-11; Smyth Surrebuttal (Ex. 15) at 11.

³² Transource Missouri is qualified to construct, finance, own, operate, and maintain the Projects given the support by the transmission and related expertise of KCP&L and of American Electric Power Company, Inc. (“AEP”). See Barton Direct (Ex. 1) at 3-11; Deggendorf Direct (Ex. 6) at 2-8; Moore Direct (Ex. 12) at 3-11; Smyth Direct (Ex. 14) at 5-9; Smyth Surrebuttal (Ex. 15) at 11.

³³ Transource Missouri will have the financial ability to construct, own, operate and maintain the Projects given the equity funding that the subsidiaries of Great Plains Energy Incorporated (“GPE”), the parent corporation of KCP&L and GMO, and AEP will provide to Transource Missouri, and Transource Missouri’s plan to issue debt. Furthermore, Transource Missouri will fully recover the cost of the Projects once completed, as the Projects’ costs are regionally allocated under the FERC-approved SPP Tariff Schedule 11. See Barton Direct (Ex. 1) at 4-8; Deggendorf Direct (Ex. 6) at 3-8; Fridley Direct (Ex. 8) at 21-30; Boteler Surrebuttal (Ex. 2) at 3-15; Locke Surrebuttal (Ex. 11) at 11-12, 34-35; Smyth Surrebuttal (Ex. 15) at 11.

³⁴ Transource Missouri’s construction of the Projects is economically feasible by virtue of the cost/benefit analysis conducted by SPP, as well as its FERC-approved cost allocation methodology under its Tariff Schedule 11. See SPP Balanced Portfolio Report (June 23, 2009), attached as Ex. 6 to the CCN Application; SPP Priority Projects Phase II Final Report (Apr. 27, 2010), attached as Ex. 11 to the CCN Application. See also Fridley Direct (Ex. 8) at 16-30; Boteler Surrebuttal (Ex. 2) at 3-15; Deggendorf Surrebuttal (Ex. 7) at 9-11; Locke Surrebuttal (Ex. 11) at 11-15, 34-35; Smyth Surrebuttal (Ex. 15) at 11.

³⁵ The Projects as proposed to be built by Transource Missouri are in the public interest, given all the above, as well as the agreement of KCP&L, GMO, and Transource Missouri to follow the provisions of Paragraphs 27, 28, and 29 of the Stipulation regarding the final route of the Sibley-Nebraska City Project. See CCN Application at 13-17; Ives Direct (Ex. 9) at 13-21; Ives Surrebuttal (Ex. 10) at 18-23; Locke Surrebuttal (Ex. 11) at 3-35; Smyth Surrebuttal (Ex. 15) at 11-14; Stipulation Section II(G)(27)-(29).

10. In a decision approving the CCN application of a natural gas company for an area not served by natural gas, the Commission described each of the above elements, including that the service must promote the public interest, stating:

The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.³⁶

In a decision approving the CCN application of Union Electric Company d/b/a AmerenUE for a 345-kV transmission line to address overloading problems, among other things, the Commission described the public in regard to the "public interest" requirement in the following terms:

Who are "the public"? Concerned Citizens argues that the Commission should not consider the benefits it admits exist for AmerenUE, Associated, or Associated's customers. Concerned Citizens would have the Commission consider only the interests of the affected landowners. However, this argument is contrary to the case law.

In the *Missouri Pacific Freight Transport Company* case, the Court stated that the 'rights of an individual with respect to issuance of a certificate are subservient to the rights of the public ...' And, in a case affirming the Commission's grant of a certificate of convenience and necessity to a water utility, the Court in *Public Water Supply District No. 8* stated, 'the ultimate interest is that interest of the public as a whole ... and not the potential hardship to individuals ...'

The Commission is also aided by zoning and eminent domain cases where the issue of public interest is often addressed. An examination of those cases in Missouri finds that the determination of public interest is a balancing test between public and private interests. And further, '[n]o one factor is dispositive in balancing public versus private interests. Each case stands on its own facts and circumstances.'

Section 386.610, RSMo, which applies to the Commission's general regulatory power over electric corporations, supports this balancing test approach. . . .

³⁶ In re Tartan Energy Company, L.C., Report and Order, Case No. GA-94-127, 1994 WL 762882 at *14 (Sept. 16, 1994).

The Commission must, therefore, balance all the relevant factors, both the benefits and detriments, and determine whether the public benefits of the project outweigh the individual detriments. . . .³⁷

11. The Commission has analyzed the CCN Application and determines that Transource Missouri meets each of these criteria, subject to the conditions of Stipulation Paragraph 27.³⁸

12. The Signatories have requested certain waivers in the Stipulation, as modified by the First Amendment. Pursuant to 4 CSR 240-2.060(4)(B), the Commission may waive a rule for good cause. The Commission finds that good cause exists to grant the waivers requested in the Stipulation.³⁹ The Commission further finds that good cause exists to grant the waivers requested in the First Amendment because Transource Missouri is not a vertically integrated retail electric utility and will have no Missouri retail customers or tariffs.⁴⁰

13. The Commission has similarly waived reporting requirements when it granted line CCNs to ITC Midwest LLC⁴¹ and Entergy Arkansas, Inc.,⁴² each of which own and operate only wholesale transmission facilities and have no retail customers.

³⁷ In re Union Electric Co. d/b/a AmerenUE, Report and Order, Case No. EO-2002-351, 2003 WL 22017276 at *15 (Aug. 21, 2003).

³⁸ See CCN Application at 13-17; SPP Balanced Portfolio Report (June 23, 2009), attached as Ex. 6 to the CCN Application; SPP Priority Projects Phase II Final Report (Apr. 27, 2010), attached as Ex. 11 to the CCN Application; Barton Direct (Ex. 1) at 3-11; Deggendorf Direct (Ex. 6) at 2-8; Fridley Direct (Ex. 8) at 16-30; Ives Direct (Ex. 9) at 13-21; Moore Direct (Ex. 12) at 3-11; Smyth Direct (Ex. 14) at 5-11; Boteler Surrebuttal (Ex. 2) at 3-15; Deggendorf Surrebuttal (Ex. 7) at 9-11; Ives Surrebuttal (Ex. 10) at 18-23; Locke Surrebuttal (Ex. 11) at 3-35; Smyth Surrebuttal (Ex. 15) at 11-14; Stipulation Section II(G)(27)-(29).

³⁹ Transfer Application at 23-25; Stipulation at II(B)(“Affiliate Transactions Rule”). See n. 47, *infra*.

⁴⁰ CCN Application at 17; First Amendment at 2-4.

⁴¹ In re Application of Interstate Power and Light Co. and ITC Midwest LLC for Approval to Transfer CCN and Transmission Line Facilities, Case No. EO-2007-0485, Order Granting Certificate of Convenience, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets at 5 (Aug. 30, 2007).

⁴² In re Application of Entergy Arkansas, Inc. for a Certificate of Convenience and Necessity, Case No. EA-2012-0321, Order Granting Certificate of Convenience and Necessity at 3 (July 11, 2012).

C. Decision.

The Commission finds that the transfer of certain assets owned by GMO related to the Iatan-Nashua Project as described in the Transfer Application are not detrimental to the public interest, conditioned upon the Commission making additional findings after the final selection of the Sibley-Nebraska City route, pursuant to Section 393.190.1. The Commission is not making any decision regarding whether NTCs are assets, but to the extent that they are assets, the Commission approves KCP&L and GMO's plans to novate the NTCs received from SPP for the Projects. The Commission finds that pursuant to 4 CSR 240-2.060(4)(B) good cause exists for waiver of certain provisions of the Commission's Affiliate Transactions Rule as described in the Stipulation.

The Commission further finds that granting Transource Missouri a line Certificate of Convenience and Necessity to construct, finance, own, operate, and maintain the Iatan-Nashua Project and the Sibley-Nebraska City Project is necessary or convenient for the public service, conditioned upon the Commission making additional findings after the final selection of the Sibley-Nebraska City route, pursuant to Section 393.170. The Commission finds that pursuant to 4 CSR 240-2.060(4)(B) good cause exists for waiver of certain portions of the reporting requirements of 4 CSR 240-3.175 and 4 CSR 240-3.190, as described in the First Amendment.

The findings are conditional, in accordance with Paragraph 27 of the Stipulation. The fact that the Stipulation contains provisions regarding future operations of the Applicants does not relieve the Commission from determining whether the proposed terms meet the standards required for Commission approval, understanding that an administrative agency is not bound by *stare decisis*.⁴³

⁴³ State ex rel. AG Processing v. PSC, 120 S.W.3d 732, 736 (Mo. en banc 2003).

D. The Commission Orders That:

1. The Unanimous Stipulation and Agreement, attached hereto as Attachment 1, and the Unanimous First Amendment to that Stipulation, attached hereto as Attachment 2, are approved and adopted, and the signatory parties are ordered to comply with their terms. The Commission is not a party to the Stipulation and only approves the agreements that have been entered into by the Signatories.

2. KCP&L and GMO's Transfer Application is granted conditioned upon the terms of the Unanimous Stipulation and Agreement and the Unanimous First Amendment, including the Commission making specific findings after the final selection of the Sibley-Nebraska City route.

3. KCP&L and/or GMO shall file a copy of the final purchase agreement, detail of the costs included in CWIP, and detail of the property to be transferred at the time of transfer of the Projects' facilities.

4. To the extent that the SPP NTCs regarding the Projects are assets, the Commission approves KCP&L and GMO's plans to novate those NTCs.

5. The Commission's Affiliate Transactions Rule sections 4 CSR 240-20.015(2)(A)2, 4 CSR 240-20.015(2)(B), and 4 CSR 240-20.015(3)(C)4 are waived with respect to:

(a) The transfer, license, or assignment of transmission assets, easements, or right of ways (or use thereof) owned by GMO or KCP&L associated with the Projects;

(b) Materials and services provided by KCP&L or GMO to Transource, Transource Missouri, or a subsidiary for the Projects prior to novation or transfer of the cost of the Projects to Transource Missouri; and

(c) Information, assets, goods, and services provided by KCP&L or GMO to Transource, Transource Missouri, or a subsidiary until the Projects are in service.

6. The Commission's Affiliate Transactions Rule sections 4 CSR 240-20.015(2)(A)2, 4 CSR 240-20.015(2)(B), and 4 CSR 240-20.015(3)(C)4 are waived to the extent necessary to allow KCP&L and GMO to use a 20% markup to their fully distributed cost methodology in lieu of using the fair market value under the Rule with respect to:

(a) Non-Project goods and services (if the Signatories cannot agree regarding the reasonableness of these charges, this matter shall be taken to the Commission for resolution);⁴⁴ and

(b) Information, assets, goods, and services provided by KCP&L or GMO to Transource, Transource Missouri, or a subsidiary for the Projects after they are in service.

7. KCP&L and GMO shall file for Commission approval of their cost allocation manuals ("CAMs") before providing any information, assets, goods, and services to Transource or Transource Missouri after either the novation or transfer of the cost of the Projects, whichever occurs first, but KCP&L and GMO may provide to Transource or Transource Missouri information, assets, goods, and services in a manner consistent with the provisions of the Stipulation prior to Commission approval of their CAMs.⁴⁵

8. Transource Missouri's CCN Application is granted conditioned upon the terms of the Unanimous Stipulation and Agreement and the Unanimous First Amendment, including the Commission making specific findings after the final selection of the Sibley-Nebraska City route.

9. Transource Missouri shall provide the Commission with the 4 CSR 240-3.105 information for the Sibley-Nebraska City route as soon as that information is available.

⁴⁴ Although the Signatories have not expressly requested a waiver of the Rule in Paragraph 6 of the Stipulation, the Commission finds that the provisions of Paragraph 6 propose treating non-Project goods and services in a manner different from the requirements of the Rule and, therefore, the Commission will treat Paragraph 6 as requesting a waiver of the Rule to the extent of its provisions.

⁴⁵ Transcript, Vol. 2 (Apr. 16, 2013) at 108-10; 4 CSR 240-20.015(3)(D), 20.015(10)(A)2.B.

10. The reporting requirements of 4 CSR 240-3.175, Submission Requirements For Electric Utility Depreciation Studies, are waived subject to the Stipulation's provision regarding Staff's and OPC's access to documents.

11. Subsections 4 CSR 240-3.190 (1), (2), and (3)(A)-(D), Reporting Requirements For Electric Utilities And Rural Electric Cooperatives, are waived for Transource Missouri.

II. CONSENT ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT.

1. The Stipulation contains a series of agreements among the Signatories that, among other things, require them (particularly the Applicants) to fulfill certain obligations. The Stipulation also specifies the establishment of certain regulatory liabilities and the manner of their future treatments. The Stipulation provides a process for administering affiliate transactions between the Signatories and related parties.

2. In particular, Section II(A) of the Stipulation provides for certain rate treatment respecting costs allocated to KCP&L or GMO by SPP involving FERC items such as authorized return on equity ("ROE"), capital structure, construction work in progress ("CWIP"), or other FERC transmission rate incentives for the Iatan-Nashua Project and the Sibley-Nebraska City Project facilities located in KCP&L's and GMO's respective service territories that are constructed by Transource Missouri. KCP&L and GMO have agreed to make these adjustments in all rate cases so long as the transmission facilities are in service.

3. Sections II(B) and II(D) address issues under the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015 ("Rule"). The Signatories agreed that provisions of the Affiliate Transactions Rule, 4 CSR 240-20.015, should apply to transactions between KCP&L and GMO on the one hand, and GPE, Transource, and Transource's utility subsidiaries on the other hand, except for the waivers as provided for in Paragraphs 4 through 6, and 11 through 13

of the Stipulation. All Signatories reserved the right to seek or oppose additional waivers for other projects (i.e., projects other than the Iatan-Nashua Project and the Sibley-Nebraska City Project) from the Affiliate Transactions Rule in the future.⁴⁶

4. The Signatories have agreed to certain payments to be made by Transource Missouri, KCP&L and GMO, including their regulatory treatment.⁴⁷ The Signatories have also agreed to other procedures that KCP&L, GMO, Transource Missouri, and their affiliates will follow with regard to the Projects.

5. The Stipulation contains provisions regarding the future operations of the Applicants in Section II(C), reporting requirements in Section II(E), and access by Staff and OPC to the books and records of Transource Missouri and Transource Energy in Section II(F). There are additional conditions in Section II(G) regarding the final selection of the route of the Sibley-Nebraska City Project, as well as public outreach efforts related to the siting, routing, easement acquisition and right-of-way acquisition for the Projects.

6. The Commission has thoroughly reviewed the terms of the Stipulation, as well as the Signatories' Joint Memorandum in Support of the Stipulation and other submissions which they have submitted jointly and individually. The Commission has also reviewed the hearing exhibits that have been entered into the record in this case. Based upon its review of the record and the Stipulation, the Commission independently finds and concludes that the Stipulation's

⁴⁶ Transcript, Vol. 2 (Apr. 16, 2013) at 103-09; 4 CSR 240-20.015(10); 4 CSR 240-2.060(4).

⁴⁷ Stipulation, Paragraph II(B)(7) at p. 7: "Transource Missouri will pay GMO the higher of \$5.9 million or net book value for transferred transmission assets, easements, and right-of-ways that have been previously included in the rate base and reflected in the retail rates of KCP&L and GMO customers. KCP&L and GMO agree to book a regulatory liability reflecting the value of this payment to the extent it exceeds net book value. This regulatory liability shall be amortized over three years beginning with the effective date of new rates in KCP&L's and GMO's next retail rate cases." Stipulation, Paragraph II(B)(6) at p. 6: "... KCP&L and GMO will contribute a total of \$50,000 to the State School Fund or a mutually agreeable organization. This contribution will not be recovered from KCP&L and GMO customers."

proposed terms are in the public interest, and that they are necessary and convenient for the public service.

7. Although the Commission's review and approval of the Stipulation does not mean that it is issuing a decision on the merits of each of the individual elements of the Stipulation, the Commission finds that the agreement entered into by the Signatories is fair and reasonable, is not detrimental to the public interest, and serves the necessity and convenience of the public.

8. The Commission finds that the actions that the Stipulation requires the Applicants to take, and the process and procedures that the Signatories have agreed to follow as the Projects are constructed and operated all relate to the promotion of efficient facilities to serve the public, and they achieve substantial justice between patrons and public utilities. PSC v. Missouri Gas Energy, 388 S.W.3d 221, 228 (Mo. App. W.D. 2012), citing Section 386.610. Consequently, it is in the public interest for the Commission to approve the Stipulation as submitted by the Signatories.

Respectfully submitted,

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Second Joint Proposed Order and Joint Proposed Consent Order Approving the Unanimous Stipulation and Agreement have been transmitted electronically to all counsel of record this July 19, 2013.

/s/ Steven Dottheim