

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

RESPONSE OF WABASH VALLEY POWER ASSOCIATION, INC.
TO STAFF RECOMMENDATION

COMES NOW Wabash Valley Power Association, Inc. (“Wabash”), through undersigned counsel, and for its response to *Staff Recommendation*, hereby states as follows:

Wabash appreciates Staff’s support for Commission approval of the transaction underlying this case. Wabash is willing to be accommodating to the recommendations of Staff with respect to providing future notice of sales or transfers. However, Wabash would like to have clarification on the Commission’s understanding of Wabash’s cooperative status as that status impacts the Commission’s jurisdiction for this and future activities of Wabash in Missouri.

The Commission should recognize in the instant case that Wabash is an entity exempt from PSC jurisdiction because Wabash is a “corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and own[s] and operate[s] electric transmission or distribution lines in a state adjacent to this state”, namely, Illinois. (Mo. Rev. Stat. 394.200; *See* Exhibit 1).

Chapter 394 of Missouri’s Revised Statutes is Missouri’s Rural Electric Cooperative enabling act. Section 394.200, cited in its entirety below, brings rural electric cooperatives (“RECs”) from neighboring states, like Wabash, into the same category as native RECs.

**Cooperative of adjacent state may extend lines and transact business
in this state, when--service of process on, how made.**

394.200. 1. Any corporation organized on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in a state adjacent to this state shall be permitted to extend its lines into and to transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state. Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business

in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf.

2. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered mail to such corporation at the address thereof specified in such instrument.

3. Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

4. Any such foreign corporation may secure its notes, bonds or other evidences of indebtedness by mortgage, pledge, deed of trust or other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, or franchises, located or to be located in this state, and also upon the revenues and income thereof.

Section 394.200 brings neighboring rural electric cooperatives under the same legal umbrella as Missouri rural electric cooperatives. Section 394.160 (cited in its entirety below) then limits the Commission's jurisdiction over those cooperatives to safety and construction standards, and specifically excludes all other categories of jurisdiction.

**Rules and regulations prescribed by public service commission--
limitation on jurisdiction of commission.**

394.160. 1. Every cooperative constructing, maintaining and operating its electric transmission or distribution lines shall construct, maintain and operate such lines in conformity with the rules and regulations relating to the manner and methods of construction, maintenance and operation and as to safety of the public and as to induction or electrical interference with other lines now or hereafter from time to time prescribed by the public service commission for the construction, maintenance and operation of electric transmission or distribution lines or system. The jurisdiction, supervision, powers and duties of the public service commission shall extend to every such cooperative so far as concerns the construction, maintenance and operation of the physical equipment of such cooperative to the extent of providing for the safety of the public and the elimination or lessening of induction or electrical interference, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules. The jurisdiction of the public service

commission shall be extended only to the extent provided in this section, and nothing herein contained shall be construed as otherwise conferring upon such commission jurisdiction over the service, rates, financing, accounting or management of any such cooperative.

2. Applications, notices, hearings, findings and orders, and all other proceedings before the commission, in pursuance of the powers and duties herein conferred upon such commission, and review thereof, shall be the same as now or hereafter provided by law for other similar proceedings before the commission and review thereof.

3. The commission may retain jurisdiction of any such cause for the purpose of making such supplemental orders in such cause as may be necessary in furtherance of the purposes of this section, or for the purpose of modifying or amending the terms of, or revoking any permit granted under, the provisions of this section for failure to comply with such rules, regulations, findings and orders made by the commission under authority of this section.

Wabash asserts it should be treated as any other rural electric cooperative operating in Missouri because it has met all requirements of 394.200. As stated above, Wabash is willing to voluntarily conform to the substance of Staff's Recommendation with respect to future notice. Wabash asks that the Commission recognize its rural electric cooperative status and the impact that status has on Commission jurisdiction.

Wabash will voluntarily agree to enter into a contractual arrangement with Citizens obligating Wabash to notify the PSC of any future sale of the assets being transferred as described in this case. Wabash asks that the Commission acknowledge this as a voluntary act by Wabash, and to further acknowledge the Commission's jurisdiction does not permit for such a requirement to be imposed upon Wabash.

WHEREFORE, Wabash respectfully requests that the Missouri Public Service Commission impose no conditions upon Wabash while acknowledging its jurisdictional constraints in that regard as its basis for deviation from that portion of Staff's Recommendation.

Respectfully submitted,

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