

Missouri Law:

The controlling statute on the issue is section 229.100 of the revised statutes of Missouri. That statute states as follows:

229.100. No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, though, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

(RSMo 1939 § 8573)

In a 2005 case, the Missouri Court of Appeals stated that the above statute "...simply prohibits public utilities from erecting power lines 'without first having obtained the assent of the county commission of such county therefore.'" Stopaquila.org v. Aquila, Inc., 180 S.W.3d 24, 40 (Mo App 2005)

In a case before the PSC, they stated as follows: "... the Commission [the PSC] may not grant a certificate of convenience and necessity unless the applicant has already obtained a local franchise, which is an 'absolute prerequisite.'" Case of Southern Missouri Natural Gas, reported at 16 Mo. P.S.C. 3d at p. 284.

Finally, the current PSC rule 4 CSR 240-3.105(1)(D) states as follows: "When approval of the affected governmental bodies is required, evidence must be provided as follows: 1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise

Witness Exhibit No. 46
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