

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day of
July, 2015.

In the Matter of the Application of Ameren Transmission)
Company of Illinois for Other Relief or, in the Alternative,)
a Certificate of Public Convenience and Necessity)
Authorizing it to Construct, Install, Own, Operate,)
Maintain and Otherwise Control and Manage a) **File No. EA-2015-0145**
345,000-volt Electric Transmission Line in Marion)
County, Missouri, and an Associated Switching Station)
Near Palmyra, Missouri.)

**REVISED ORDER GRANTING CERTIFICATE OF CONVENIENCE
AND NECESSITY**

Issue Date: July 22, 2015

Effective Date: August 1, 2015

Procedural History

On February 20, 2015¹, Ameren Transmission Company of Illinois (“ATXI”) asked the Commission to either find that it does not have jurisdiction over this project or, in the alternative, to grant ATXI a certificate of convenience and necessity to build it. In particular, ATXI wants to build a 345,000 volt transmission line about seven miles long that runs from Palmyra, Missouri and across the Mississippi River to the Missouri state line.

The Commission provided notice and set a deadline for applications to intervene. The Commission received timely intervention requests from United for Missouri, Inc., and Missouri Industrial Energy Consumers, which the Commission granted.

¹ Calendar references are to 2015.

The Staff of the Commission filed its Recommendation on April 20. Staff recommends the Commission grant the certificate, subject to certain conditions. Staff further recommends the Commission grant certain rule waivers to ATXI, as requested in the application.

ATXI responded on April 24, accepting Staff's conditions. No party has objected to Staff's Recommendation or to ATXI's acceptance of the Recommendation.

The Commission issued an Order Granting Certificate of Convenience and Necessity on June 2. ATXI filed an application for rehearing on June 11, contending that the Commission order did not sufficiently explain the basis for the Commission's decision that it has jurisdiction over this project. The Commission is issuing this revised order to address ATXI's contention.

Findings of Fact

ATXI wants to build a 345,000 volt electric transmission line about seven miles long through a portion of Missouri.² As described in the Application, "(t)he Project is a portion of the portfolio of multi-value projects (MVPs) approved by the Midcontinent Independent System Operator, Inc. (MISO) in 2011, and is a part of a new transmission line approximately 385 miles in length along a path running generally from Palmyra, Missouri, then continuing through northeastern Missouri, across the Mississippi river and continuing east across Illinois to western Indiana (identified by ATXI in its entirety as the Illinois Rivers Project)."³

"This project will provide for the integration of wind energy in Missouri to increase the amount of electricity available from renewable resources, including wind energy that would

² Application, ¶ 5 (filed February 20, 2015).

³ *Id.* at ¶ 6.

be transported to aid Missouri public utilities in complying with Missouri's Renewable Energy Standard.”⁴ “The Project is also part of improvements to the regional transmission system under MISO's functional control and will improve the overall reliability of the regional transmission system and reduce transmission system congestion.”⁵

Conclusions of Law

Section 393.140.1, RSMo 2000, gives the Commission general supervisory authority over all “electrical corporations.” That statute specifically applies to electrical corporations that have authority “for the purpose of furnishing *or transmitting* electricity for light, heat, or power”(emphasis added).

Section 386.020(15), RSMo (Cum. Supp. 2013) defines “electrical corporation” as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes for its own use or the use of its tenants and not for sale to others.

That is a complex sentence, but stripped to its essentials, it provides that an electrical corporation is any owner or operator of electric plant, unless the electric plant exists only for its own use and not for the sale of electricity to others.

Section 386.020(14), RSMo (Cum. Supp. 2013) defines “electric plant” as including:

all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, *transmission*, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or

⁴ *Id.* at ¶ 13.

⁵ *Id.*

property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power (emphasis added).

ATXI's proposed electric transmission line falls within that definition.

ATXI's proposed transmission line is electric plant within the meaning of the statute. As the owner of that electric plant, ATXI is an electrical corporation. As an electrical corporation, ATXI is subject to regulation by this Commission. Finally, Section 393.170, RSMo 2000 requires that an electrical corporation obtain approval from this Commission before beginning construction of electric plant. Thus, ATXI needs permission from this Commission to construct its transmission line and the Commission has jurisdiction to address that matter.

Despite the clarity of the statutes, ATXI argues that Missouri's courts have construed these statutes in a way that exempts it from regulation by the Commission. Specifically, ATXI argues that to be an electrical corporation under the jurisdiction of the Commission, the entity must serve or otherwise hold itself out to indiscriminately provide electric service to the general public at retail. In support of that assertion, ATXI primarily cites a Missouri Supreme Court decision from 1918, *State ex rel. M. O. Danciger & Co. v. Pub. Serv. Comm'n*.⁶ A review of the *Danciger* decision reveals that it does not support ATXI's argument.

In the *Danciger* case, Danciger was part owner of a pre-prohibition brewery operating in Weston, Missouri. The company built its own electrical generating plant to provide power to the brewery, and Danciger, through a company created for that purpose, sold the excess electricity to friendly businesses in the town, including the local newspaper.

⁶ 205 S.W. 36 (Mo. 1918).

However, Danciger abruptly cut the power line to the newspaper and other customers⁷ and they brought a complaint before the Commission arguing that Danciger's electrical business was a public utility subject to the Commission's regulation. The Commission found that Danciger's company was operating as a public electric utility and ordered it to restore service to all its customers.

On appeal, the Missouri Supreme Court held that the brewery was not a public electric utility. In doing so, the court relied on the United States Supreme Court decision that paved the way for all state regulation of public utilities, *Munn v. Illinois*.⁸ That decision held that state regulation of a private business was permissible only if the owner of the business had devoted the business to a "public use" for which the public interest justified public regulation. In the words of the Missouri Supreme Court:

the operation of the electric plant must of necessity be for a public use, and therefore be coupled with a public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation.⁹

That then is the *Danciger* test; whether the electric plant has been devoted to the public use. Contrary to ATXI's assertion, there is no requirement that the alleged public utility indiscriminately provide electric service to the general public at retail.

Although ATXI will not be selling electricity at retail to the public, its application establishes that the electric transmission line it proposes to build and operate will be an integral link in the sale and distribution of electricity to the public. In fact, the transmission line's importance to that public purpose is the basis for ATXI's claim that the line is needed. Under the circumstances, the Commission finds that the electric transmission line that ATXI

⁷ The Commission's decision on the complaint explains that Danciger cut off electricity to those customers who advocated for prohibition in a local election. *Roach v. M.O. Danciger & Co.* 4 Mo. P.S.C. 650 (1916)

⁸ 94 U.S. 113 (1876).

⁹ *Danciger*, at 40.

proposes to build will be dedicated to the public service and is subject to regulation by this Commission under the *Danciger* test.

As an alternative, ATXI argues that its transmission line in Missouri is not subject to regulation by this Commission because the Commission's jurisdiction is limited to intrastate operations of public utilities and does not extend to utilities engaged only in interstate commerce. ATXI points to section 386.030, RSMo 2000, which states:

Neither this chapter, nor any provision of this chapter, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

So the issue becomes whether the Federal Energy Regulatory Commission (FERC), which generally regulates the interstate transmission of electricity, has preempted the Commission's regulation of ATXI under state authority.

While FERC has authority over the transmission of electricity in interstate commerce,¹⁰ it does not claim jurisdiction over the siting of transmission facilities. On the contrary, "[S]tates have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities."¹¹ The Commission concludes that federal law does not preempt this Commission's authority to require ATXI to obtain permission, in the form of a certificate of convenience and necessity, before constructing electric plant in this state.

Decision

The Commission may grant an electrical corporation a certificate of convenience and necessity to operate after determining that the construction and operation are either

¹⁰ 16 U.S.C. §824(a)(1).

¹¹ *Piedmont Env'tl. Council v. F.E.R.C.*, 558 F. 3d 304, 310 (4th Cir. 2009).

“necessary or convenient for the public service.”¹² The Commission has stated five criteria that it will use to make that determination:

- 1) There must be a need for the service;
- 2) The applicant must be qualified to provide the proposed service;
- 3) The applicant must have the financial ability to provide the service;
- 4) The applicant’s proposal must be economically feasible; and
- 5) The service must promote the public interest.¹³

Based on the verified application and the verified recommendation of Staff, the Commission finds that granting ATXI’s application for a certificate of convenience and necessity to provide electrical service meet the above listed criteria.¹⁴ The application will be granted. Because the application is unopposed, and because the Commission does not wish to cause undue delay, this order will be given a ten-day effective date.

THE COMMISSION ORDERS THAT:

1. Ameren Transmission Company of Illinois is granted permission, approval, and a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain electrical plant for its existing facilities in Missouri and its new facilities in Missouri, as more particularly described in its application and Staff Recommendation.

¹² Section 393.170, RSMo.

¹³ *In re Tartan Energy Company*, 3 Mo. P.S.C. 173, 177 (1994).

¹⁴ The requirement for a hearing is met when the opportunity for hearing is provided and no proper party requests the opportunity to present evidence. No party requested a hearing in this matter; thus, no hearing is necessary. *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n of the State of Missouri*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

2. As requested by Ameren Transmission Company of Illinois, and agreed upon by Staff, the Commission waives the reporting requirements of Commission Rule 4 CSR 240-3.145 (rate schedule filing), 4 CSR 240-3.175 (depreciation) and Commission Rule 4 CSR 240-3.190(1), (2) and (3)(A)-(D) (generation).

3. As requested by Staff, and agreed upon by Ameren Transmission Company of Illinois, Ameren Transmission Company of Illinois shall file with the Commission the annual report it files with the Federal Energy Regulatory Commission.

4. This order shall become effective on August 1, 2015.

5. This file shall be closed on August 2, 2015.

BY THE COMMISSION



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

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge