

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

In the Matter of the Application of Union )	
Electric Company for Permission and )	
Authority to Construct, Operate, Own, and )	<b><u>Case No. EO-2002-351</u></b>
Maintain a 345 Kilovolt Transmission Line )	
in Maries, Osage, and Pulaski Counties, )	
Missouri ("Callaway-Franks Line"). )	

**Dissenting Opinion of Commissioner Steve Gaw**

The taking of private property for a public purpose is one of the most troubling of cases. Such cases strike chords that ring deep into the traditions of America's roots – the balancing of the individuals' rights and freedoms from government interference against the common good of those who make up their communities, states and nation. To have ignored the common good would have resulted in an America without a national defense, an interstate highway and rail system, and all government services that exist today. To not acknowledge individual rights is to ignore those pronouncements in this nation's Declaration of Independence and Constitution confirming and establishing our rights and freedoms. The property rights of an individual are not supreme. Neither are they merely measured in dollars and cents. Property, particularly land, often represents more - the home of a family, the place where hopes and dreams have become a reality after years of work, the place that holds the memories of fishing trips with a grandfather or where the first steps were taken by a child. Looking out across an otherwise unobstructed tree-lined sky as the sun sets in Missouri may be part of the reason why a farm in central Missouri was purchased by a family at a premium – and why it is not for sale at twice the fair market value.

Private property rights are protected in this country and may not be taken without adequate compensation and due process of law. The degree of scrutiny, however, has varied. In public interest and condemnation proceedings involving the placement of utilities such variation is significant.

Missouri has acknowledged the necessity of condemnation in order to deliver utility services to the residences and businesses within the state. The Missouri legislature made this a two-step process in the acquiring of property from unwilling sellers. First, a determination of convenience and necessity requiring an assessment of public interest is necessary, and if so found then second, a condemnation process to fix the price to be paid for the acquisition of the property or property right is required. It is the first stage of the process that is before this Commission. Missouri lacks significant guidance from the Courts and the Legislature in determining the public interest in these cases. It is my belief that this examination should include the following: First, is there a need for the construction from a financial and engineering standpoint? Second, do the benefits of the construction justify the costs? Within this question should be considered who is benefiting and who is paying. Finally, is the route proposed the better route in light of other alternatives? This comparison should examine the respective economic and human benefits and costs, the intrusion into private property interests, and environmental impacts. It is my belief that the Commission does not have the information needed to adequately answer these questions.

AmerenUE has presented a significant case for improvement of the transmission grid in the region at issue. As noted in the majority opinion, congestion exists in the area of interest which has resulted in transmission line loading relief (TLRs) being called in the last few years. Such congestion can result in difficulty in the proper functioning of the grid from an engineering standpoint. It can cause some generators otherwise available to be unavailable to service certain loads and lead to additional costs of electricity to those utilities and customers utilizing the grid

in the area. At the extreme it can result in curtailments of load and unreliability. As such, relief of congestion is generally considered in the public interest. However, an evaluation of the need for new construction should not occur without an assessment of the cost of the new construction measured against the severity of the congestion problem. In other words, congestion carries a price, which must be measured against the price of construction.

Until the last few years, the evaluation of proposed construction done in the context of a utility expansion to serve native load was simpler. A utility had a good idea about the rate of return that might be available on new assets from their prior rate case. If the assets were necessary to serve the native load and financially advisable then the company would likely propose a build. Thus, the evaluation of the wisdom of new construction began with an assumption that it was in the company's best interest.

Today, the financial aspect of new transmission construction is in a state of transition and some might say confusion. The rules for reimbursement for new builds are themselves "under construction" at the Federal Energy Regulatory Commission (FERC) and within the Midwest Independent System Operator (MISO) footprint (which may include the area in issue).

Transmission construction has been in a state of flux for several years now. This is in part due to the usurping by the federal government of what had been traditionally state jurisdiction.

Formerly the states insured adequate electricity was available at reasonable prices to native load customers. This model served Missouri well, producing electric rates that are lower than average coupled with generally reliable service. FERC's orders opening the grid, built by public utility companies to service their assigned load, to independent power producers changed the dynamics of the system in many ways. The ability of others to use the grid and the push toward more wholesale power sales increased the physical pressure on the grid and decreased the certainty of adequate return to a utility investing in new construction. The uncertainty of adequate return on this proposed line is further enhanced because no rate case is likely to be filed by AmerenUE

prior to 2007. Rates are fixed until then at specific levels. More information would have helped the Commission to understand AmerenUE's willingness to build in this environment.

It is not clear who ultimately will help pay for the costs of building the proposed transmission line even though it is clear that others buying and selling electricity in the market place, other than AmerenUE and the Cooperatives, will be benefiting from the line after construction. There was no evidence about how much income from others using the line AmerenUE is expecting. And, there was no analysis evaluating the benefit of this construction to the native load customers except in a very general sense.

In the new world of Standard Market Design (SMD), financial incentives to relieve constraints are supposed to be exhibited in the market. Thus the costs for congestion theoretically will appear and be available in determining whether it is financially advisable to construct new lines. No evidence was presented about how these markets might impact the area we examined in this case, even though the markets are to be implemented before this line will be completed. Such an analysis would have been helpful in determining whether the costs of the constraints in this area warrant the costs of the construction. Furthermore, no evidence was provided as to whether constraints on the line might be relieved by the implementation of a locational marginal pricing (LMP) market – which is an advertised benefit. In the future financial and economic analysis should be a necessary component of assessing public interest in new construction.

If the conclusion is reached that the public interest warrants construction of a new line then what more is required of the Commission? Some states seem to say that a Commission should rarely interfere with a utility's judgment in determining the location of a route. Others, some by specific statutory direction, require an evaluation and balancing of alternative routes as a part of its decision-making. If the latter method is used there is insufficient evidence to render a decision.

AmerenUE, prior to filing this case, began with several possible routes, but abandoned them in favor of the proposed route on the basis of two factors – the availability of easements over a significant portion of the route and a slightly shorter point-to-point distance on completion of the line. The problem with this is not whether the factors are relevant. It is whether they are the only factors which should be examined.

AmerenUE presents little evidence comparing alternative routes. While acknowledging that other routes were worthy of study, there was little or no evidence given on comparative financial costs, economic viability, environmental impact, and human impact. Obviously, this Commission cannot weigh the benefits and detriments of different routes without this information.

It is helpful to AmerenUE's position that easements are available across a good portion of the proposed route. Such easements should help lessen the financial impact on AmerenUE and arguably lessen the impact on the property rights of others. Nevertheless, it could be inferred that building an adjoining line by the 345 kv line from Bland to Franks would be done by a widening of existing easements along that line. Furthermore, there are fewer miles of construction along the Bland-Franks line. Yet the comparative assessments of impact, financial and otherwise, were not fully developed. The public interest argument for this line interestingly, was helped more by witnesses from non-AmerenUE employees. The Coops, upon questions from the bench, shed some light on merits of this proposed line location that gave the Commission a glimpse of how public interest for this construction favored this site over others. Why AmerenUE did not develop this argument more fully itself is curious. Creating a complete and open picture would give this Commission the insight and judgment to assess the wisdom of a route. Unfortunately, that was not done in this case.

The placement of this line was never adequately delineated. With this case the Commission may establish a precedent that companies need not give specifics of line location in

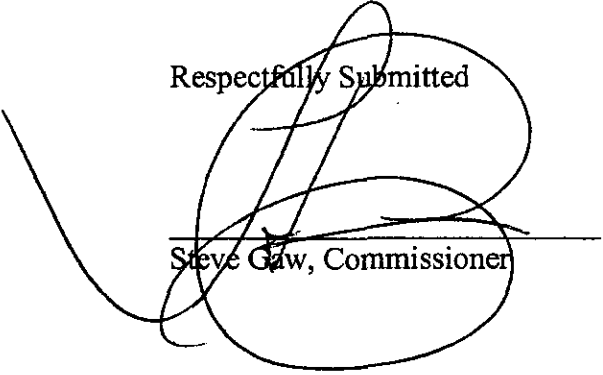
order to gain approval. While AmerenUE's line position is not stated, it is clear that it may proceed with condemnation and construction. The establishment of line location is important. It allows the Commission to fully evaluate and balance public interest and it puts landowners potentially impacted on clear notice. AmerenUE's highway map with an approximate location of the line should not be deemed sufficient.

AmerenUE's argument as to line length is not in and of itself convincing. While shorter line length can improve efficiency, no evidence was presented on the specific savings. Taken to the extreme all lines would be built to the shortest distance and often with unacceptable results. The grid is made up of many interconnecting lines – a simple point-to-point assessment of distance is not always the whole picture from an engineering standpoint. Neither does it fit the new market designs. Advisable or not, we are moving toward economic models that contemplate financial transactions over hundreds of miles often paying little attention to miles of transmission used.

My dissent from this order does not reflect a conclusion that this route is not in the public interest. Rather, it is my belief that the parties have not presented the full record upon which this Commission can properly evaluate and balance public interest. Public interest should not be deemed satisfied without a complete evaluation. Individuals and families deserve and have a right to a thorough examination of that interest before their property rights are taken from them. A thorough evaluation here may have produced the same result – but that we do not know. It does not change the duty of this Commission to give the private property owners and AmerenUE ratepayers that process. We should have a better record on the comparisons of the viable routes including the respective human, financial, and environmental impact and advantage. This Commission should examine the financial consequences of this proposal in light of the developing markets.

Finally, this Commission and the landowners impacted deserve to know where this line will go. Otherwise the public interest cannot be properly weighed. Therefore, I must dissent from this order.

Respectfully Submitted

  
Steve Gaw, Commissioner

Dated at Jefferson City, Missouri  
on this 27th day of August, 2003.