

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

AUG 29 2003

Missouri Public
Service Commission

In the Matter of the Application of Union)
Electric Company for Permission and)
Authority to Construct, Operate, Own and)
Maintain a 345 Kilovolt Transmission Line)
in Maries, Osage, and Pulaski Counties,)
Missouri ("Callaway-Franks Line").)

Case No. EO-2002-351

CONCERNED CITIZENS OF FAMILY FARMS AND HERITAGE'S
APPLICATION FOR REHEARING OR RECONSIDERATION
OF REPORT AND ORDER, ISSUED AUGUST 21, 2003

COMES NOW Intervenor, Concerned Citizens of Family Farms and Heritage, pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160, and respectfully seeks rehearing or reconsideration of the August 21, 2003 Report and Order issued in this case on the following grounds:

The Commissions order states that "the Commission finds that by eliminating the overloading, the proposed Callaway - Franks line will enhance the reliability of the entire electric grid, for AmerenUE, for cooperative customers in Missouri, and for electric utility customers outside Missouri." (Order, page 12). The Commissions basis for determining that the new line is necessary is erroneously based upon benefits to utility customers outside the state of Missouri. The Public Service Commission's review and approval is solely for the benefit and protection of Missourians and any need that arises to benefit non Missouri customers, such as the construction of the Callaway - Franks line, should not be given any deference by the Commission. The reason the current Bland - Franks line is overloaded is due to AmerenUE's out-of-state customers and as a result this Commission should reconsider its order finding that an additional line is necessary due to AmerenUE' action in shipping electricity out of the state provides no benefits to in state Missouri customers.

The Commission stated that a 300 foot set back from existing structures is not a necessary condition for the construction of the transmission line. (Order, page 16). The Commission's decision goes in the face of its own comments about the direct effect upon the Drennan property and other property where residences are near the transmission lines. The Commission's order recognizes that the electro magnetic fields (EMF) and the humming noise will "cause a detriment to those specific individuals" around the line. (Order, page 15). This recognition of the detriment demonstrates that a set back should be imposed by the Commission. The Commission should reconsider its order respecting the 300 foot set back and the set back to be imposed for any construction of transmission line pursuant to this matter.

The Commission's order found that making a profit from the building of the line in a particular location is not a detriment to the public interest. (Order, page 23) While no one objects to an appropriate return on investment by AmerenUE; the shipping of electricity out of state on the backs of local landowners is a detriment to the public interest and AmerenUE has not demonstrated how there is any public benefit to a new transmission line designed to ship power out of the state of Missouri. The Commission should reconsider its order and determine that a transmission line should only be approved where the sole purpose is to benefit Missouri consumers.

The Commission's order found that the line location, contained in AmerenUE's application, was adequate. (Order, page 25) The Commission's order is in error on this issue on several bases. First, the sole indication of where the line would end up lying was a highway map with a highlighted route on it. (That map had a scale so broad as to make the line "location," noted thereon, meaningless.) The rules of the Public Service Commission require for a full and complete application to be submitted. Specifically, 4 CSR 240-2.060 states, in part, as follows

(B) If the application is for electrical transmission lines, gas transmission lines or electrical production facilities—

1. A description of the route of construction and a list of all electric and telephone lines of regulated and nonregulated utilities, railroad tracks or any underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;

2. The plans and specifications for the complete construction project and estimated cost of the construction project or a statement of the reasons the information is currently unavailable and a date when it will be furnished; ...

Part of AmerenUE's application should indicate where the location of the line will be so that the Commission can determine whether such line construction is reasonable and necessary on behalf of the utility. AmerenUE had the burden to show where the location is and it failed to demonstrate with any reasonable certainty the location of the transmission line.

Secondly, the application must contain the plans and specifications for the complete construction project. The Applicant did not submit such plans and specifications. AmerenUE has the burden to comply with the rules regarding its application and it failed to do so and thus its Application should be denied.

The burden of proof and evidence is upon the applicant, in this case AmerenUE, and it has not met that burden and thus this Commission should reconsider its order and find that the location and supporting documents and the lack of plans and specifications in the Application submitted by AmerenUE were not sufficient and thus that the application should be denied.

The Commission's order references Section 386.610, RSMo. as supporting a balancing test for transmission lines. (Order, page 28) The case law supporting §386.610 specifies that the public welfare that is to be balanced is the public welfare of the "community". *State ex rel. City of St. Louis*

v. Public Service Commission, 56 S.W.2d 398, 404 (Mo.App. 1932). In looking at the benefits to a community, it is not sufficient to look at solely the benefits of AmerenUE customers but also of the community where the transmission line is to go in. As the Supreme Court had stated the Public Service Commission “must not permit the corporation to infringe the equal rights of individual....” *Id.* at 405. Such liberal construction should view the welfare of the citizens of the community where the transmission line is going, such as the Intervenor in this matter, and the welfare of Missouri consumers; however, the Commission’s order has not done that and in fact solely benefits a private utility, AmerenUE, and its out of state customers at the expense of local community members. The Commission should reconsider its order finding that the construction of the transmission line is not beneficial to the public welfare and instead the application should not be approved as not beneficial to the public welfare.

The Commission’s order finds that the “best solution” option is not an appropriate standard for determining location of transmission lines. (Order, page 28-9). The Commission’s decision is void for any legal support to that position. The application of AmerenUE references that other locations were reviewed however there is no documentation nor evidence put in as to what those other locations were and the costs and advantages of utilizing those options. The burden is upon the applicant, AmerenUE, to demonstrate compliance with the statute and necessity of this transmission line. Such burden requires a showing that the Callaway - Franks line is the best option and the most beneficial to the public welfare and the community. In fact, there are other options to the Callaway-Franks line location that are more beneficial to the public welfare, including the local community and the Missouri customers of AmerenUE. AmerenUE’s burden has not been carried and this Commission should reconsider its order and deny the application based upon AmerenUE’ failure to

demonstrate that the Callaway - Franks line is the best option for relieving any type of electrical transmission issues that may benefit the Missouri public and local communities.

The Commission's order finds that the limitations on liability for injury to persons and property of AmerenUE during and after construction of line were not reasonable or necessary conditions of the construction. (Order, page 33). The construction of the line will take private property. It is not in the public welfare or interest of the community for such landowners, whose property is forcibly taken and remaining property is detrimentally impacted, to then suffer potential liability to AmerenUE from actions involving AmerenUE property or personnel. The Commission should reconsider this decision and order that AmerenUE agree to limit any liability of the property owner to AmerenUE due to or relating to entering such property by AmerenUE, its property or any of its personnel.

The Commission's order finds that the full compensation to the property owners for any injuries or damages to their property by AmerenUE during and after construction of line was not a reasonable or necessary condition of the construction. (Order, 33-4). The construction of the line will take private property and it is not in the public welfare or interest of the community for such landowners, whose property is forcibly taken and remaining property is detrimentally impacted, to not be fully compensated for the damages to that property from the actions of AmerenUE during such construction and operation of the transmission line. The Commission should reconsider this decision and order that AmerenUE fully compensate all landowners for any damages to their property resulting from the construction or operation of the transmission line.

The Commission's Order finally held that it would not set as a condition that failure to comply with the conditions, by AmerenUE, would result in the potential negation of the

Commission's approval of the application for construction and operation of the transmission line. (Order, page 34). This holding should be reconsidered as the only means by which such conditions can be fully enforced is through an action for negation of the approval in that AmerenUE's assets are such that any fine levied by the Commission would be so insignificant as to make enforcement, via fines, unavailable. Furthermore, the public welfare mandates that any failure to comply with the proper conditions of construction and operation should make AmerenUE halt the construction and/or operation until the Applicant ceases its non-conforming actions and complies with all conditions. This Commission has the power to negate the approval due to the actions of the Applicant and such condition should be included in the Order. Thus the Commission should reconsider this issue.

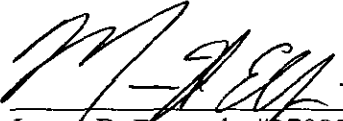
The Order of the Commission and Ameren's application, fails to demonstrate the benefit to local utility customers and the local community by the construction of the Callaway - Franks transmission line. The primary beneficiaries of such a line are AmerenUE and its shareholders and out of state power consumers who seek to receive electricity from AmerenUE. The burden is upon AmerenUE to demonstrate that construction of the line is in the best interest of public welfare, specifically Missouri users of electricity and the local communities, such burden has not been met. While it may be possible for such a burden to be shown Ameren has not complied with this burden thus its application should be denied. This Commission should reconsider its order of August 21, 2003, and deny the application.

WHEREFORE, Intervenor Concerned Citizens of Family Farms and Heritage requests rehearing or reconsideration of the Commission's August 21, 2003, Report and Order in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

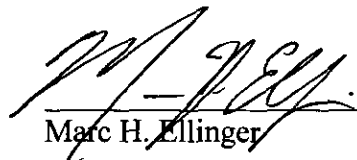
I hereby certify that true and correct copies of the above and foregoing document were sent U.S. Mail, postage prepaid, to the following parties of record on this 29th day of August, 2003:

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