

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

In the Matter of the Application of Ameren)
Transmission Company of Illinois for a)
Certificate of Public Convenience and)
Necessity to Construct, Install, Own,)
Operate, Maintain, and Otherwise Control)
and Manage a 138 kV Transmission Line and)
associated facilities in Perry County,)
Missouri)

Case No. EA-2025-0222

RESPONSE TO STAFF RECOMMENDATION

COMES NOW, the Office of the Public Counsel (the “OPC”) and in response to the Staff of the Public Service Commission of the State of Missouri’s (the “Staff” and “Commission,” respectively) Recommendation (the “Recommendation,” Doc. 13) requests that the Commission impose two additional conditions on its approval of Ameren Transmission Company of Illinois’s (“ATXI”) requested Certificate of Convenience and Necessity (“CCN”) for the Grand Tower Project or, alternatively, order a Procedural Schedule. In support, the OPC states as follows:

I. Background

On May 1, 2025, ATXI filed an Application and supporting Direct Testimony requesting the Commission issue a CCN to ATXI to “construct, install, own, operate, maintain, and otherwise control and manage a new, approximately four-mile, 138-kV transmission line and associated facilities in Perry County, Missouri.” (Appl. 1, Doc. 2). ATXI requested that the Commission issue an order on its Application no later than March 1, 2026. (*Id.*).

On September 15, 2025, Staff filed its Recommendation suggesting that the Commission issue the requested CCN with certain identified conditions. (Rec. 33-39). On September 25, 2025, Staff and ATXI filed a Joint Recommendation for Granting of Certificate of Convenience and Necessity (the “Joint Recommendation”) identifying modifications to one of Staff’s proposed conditions and the deletion of three other proposed conditions. (Jt. Rec. 2, Doc. 14). With those

proposed changes, Staff and ATXI requested that the Commission issue the CCN and impose the conditions identified in Staff's Recommendation, as modified by the Joint Recommendation. (*Id.*). Also, on September 25, 2025, the OPC filed a Motion for Extension explaining that it required additional time to conduct further discovery and requested that the Commission extend the deadline to respond to Staff's Recommendation until October 24, 2025. (Mot. for Extension 2, Doc. 15). The next day, the Commission granted the OPC's request. (Doc. 16).

II. OPC Response

The OPC has concerns with the language of the easement that ATXI will propose to landowners when it requests easements for the Grand Tower project. The OPC's concerns are that the easement is overbroad and contains language that attempts to circumvent the landowner protections afforded by the expanded use statute, § 523.283 RSMo. It does not appear that Staff considered the language of ATXI's proposed easement in completing its Recommendation. For these reasons, the OPC files this Response to Staff's Recommendation, requesting that the Commission either impose two additional conditions on any CCN that it may grant or order a Procedural Schedule.

A. The Proposed Easement

Ms. Spurlock attaches ATXI's "standard easement" to her Direct Testimony as Schedule JS-02. (Spurlock Direct Test. 4, Schedule JS-02 ("Proposed Easement", Doc. 5). She explains that ATXI will use this Proposed Easement "to acquire easement rights for the Transmission Line." (*Id.* 4). She states that the Proposed Easement is provided "for illustrative purposes, and the terms may be modified as circumstances require based on discussions with landowners." (*Id.*).

The Proposed Easement contains, in part, the following language:

[GRANTOR] . . . does hereby grant unto AMEREN TRANSMISSION COMPANY OF ILLINOIS . . . a perpetual easement (hereinafter "Easement") with the right, privilege, and authority of Grantee, its agents, contractors, and subcontractors to survey, stake, construct, reconstruct, replace, use, operate, maintain, patrol, inspect, protect, repair, relocate, *modify, add to the number of and remove an electric and communication line or lines* consisting of towers, poles, crossarms, guys, anchors, wires, cables, conduits, fixtures, foundations, footings and other appurtenances thereto (hereinafter individually or collectively "Facilities"), *together with the authority to extend to any other party the right to use, pursuant to the provisions hereof*, upon, over, across and under Grantor's land described in Exhibit "A", with the area of the Easement described in Exhibit "B" (hereinafter "Easement Area") and illustrated in Exhibit "C", said exhibits attached hereto and made a part hereof . . . ; together with all rights and privileges for the exercise and enjoyment of the Easement rights

(Proposed Easement 1 (emphasis added)). The italicized language gives rise to the OPC's two concerns, as explained in greater detail below.

B. The OPC's Concerns

The OPC is concerned that the language of the Proposed Easement is overbroad and attempts to circumvent the landowner protections provided for in the expanded use statute, § 523.283 RSMo. The OPC will address each concern in turn.

1. The Proposed Easement is Overbroad

First, the OPC is concerned that, as written, the Proposed Easement allows ATXI to make material changes to the transmission line once it is installed on the easement, without consulting or further compensating the landowner. This could include increasing the voltage of the line.

In its Application, Ameren seeks Commission authority to construct a 138-kV transmission line. (Appl. 1). It states that it will "design and install structures that are capable of being outfitted with an additional transmission circuit at a voltage of up to 345-kV in the future." (*Id.* 4).

Based on ATXI's responses to the OPC's data requests, it is the OPC's understanding that the voltage of the line determines the width of the necessary easement. (*See* ATXI Resp. to OPC DR 48 (stating "Ameren has standard widths for each voltage that determines the clearance widths

necessary to operate safely and reliably”)). Therefore, the OPC believes that in ordinary circumstances, if ATXI wished to increase the voltage of the line, it would be required to negotiate with the landowner for a wider easement. (*See id.*).

However, in this case, because ATXI intends to initially construct the line to support a higher voltage, it will require wider easements from the inception of the project. (ATXI Resp. to OPC DR 23 (stating “If ATXI is only approved to construct a single circuit 138kv line, the easement width would be reduced from 150ft to 100ft, excluding the river crossing.”)). Therefore, the OPC is concerned that landowners will not be appropriately compensated for an easement that will essentially allow for at least two different projects: (1) the initial 138-kV line, and (2) the 345-kV line that may be necessary in the future.

2. The Proposed Easement Attempts to Circumvent the Spirit of the Expanded Use Statute, § 523.283 RSMo.

The OPC is also concerned that the language of the easement could be interpreted to allow future third parties, or ATXI itself in certain circumstances, to circumvent the protection afforded by the expanded use statute, § 523.283 RSMo. Specifically, one could interpret the Proposed Easement to authorize ATXI to contract with a third-party to allow that third-party to install additional infrastructure on the poles of the transmission line without conducting its own negotiation with the landowner. (Proposed Easement 1 (stating, in part, “together with the authority to extend to any other party the right to use, pursuant to the provisions hereof”)). This could look like ATXI contracting with Mediacom for Mediacom to install wires on the poles of the Grand Tower project so that Mediacom could provide commercial telecommunication services. Mediacom, in this example, could do so without contacting the landowners or compensating them for the additional use of their land. ATXI confirmed in response to the OPC’s data requests that it believes this interpretation to be true. (*See* ATXI Resp. to OPC DR 46 & 47).

Section 523.283 of the Revised Statutes of Missouri prohibits the expanded use of certain easements without an additional negotiation with and compensation to the landowner.

Specifically, that statute states

Easements or right-of-way interests acquired after August 28, 2006, by a private utility company . . . by either formal condemnation proceedings or by negotiations in lieu of condemnation proceedings, are fixed and determined by the particular use for which the property was acquired as described in either the instrument of conveyance or in the condemnation petition. *Expanded use of the property* beyond that which is described in the instrument of conveyance or the condemnation petition *shall require either an additional condemnation proceeding in order to acquire the additional rights or by new negotiations for the expanded use of the property and appropriate consideration and damages to the current owner of the property for the expanded use.*

§ 523.283.1 RSMo. (emphasis added). The statute defines expanded use to mean “the exclusion of use by the current owner of the burdened property from an area greater than the area originally described at the time of acquisition by the condemning authority” or “[a]n increased footprint or burden greater than the footprint or burden originally described in the instrument of conveyance or condemnation petition.” § 523.283.2 RSMo. It further defines increased footprint or burden as “a *different type of use* or a use presenting an unreasonably burdensome impact on the property, the landowner, or the activities being conducted on the property by the landowner.” § 523.283.2(2) RSMo. (emphasis added).

Case law suggests that allowing, for instance, a wire to be used for commercial telecommunication services to be installed in the easement without requesting an additional easement from the landowner violates the expanded use statute. *See, e.g., Barfield v. Sho-Me Power Elec. Coop.*, 852 F.3d 795, 801-02 (8th Cir. 2017); *Carroll Elec. Coop. Corp. v. Lambert*, 403 S.W.3d 637, 646 (Mo. Ct. App. 2012).

The expanded use statute recognizes the importance of a landowner’s right to his or her property by requiring additional compensation for the expanded use of certain easements. *See*

§ 523.283 RSMo. Here, if ATXI succeeds in including the proposed language in the easements that it negotiates with landowners, then subsequent expanded use of the easement (such as that identified above in the example with Mediacom) may not violate § 523.283 RSMo. (stating, in part, “Easements . . . are fixed and determined by the particular use for which the property was acquired as described in . . . the instrument of conveyance . . .”). This situation exists because the language of the easement itself would arguably allow ATXI to contract with Mediacom without Mediacom needing to separately negotiate with the landowners.¹ This understanding gives rise to the OPC’s concerns. Namely that allowing ATXI to include such language in the Proposed Easement violates the spirit of the protections afforded in the expanded use statute. The OPC’s concern is also heightened by its understanding that many landowners are not represented by counsel when they review the proposed easement and, therefore, may not realize that they are contracting away their right for additional compensation in the future.²

C. The OPC’s Proposed Conditions and Alternative Request for a Procedural Schedule

In recognition of its concerns with the Proposed Easement, the OPC requests that the Commission impose two conditions in addition to those requested by Staff in its Recommendation, as modified by the Joint Recommendation, on the Commission’s grant of the CCN in this case. The OPC’s proposed conditions are:

¹ It appears that this is ATXI’s understanding of the language of the easement. (See ATXI Resp. to OPC DR 46 & 47).

² Importantly, the approximately 19 words allowing for this situation to occur are buried in the middle of a paragraph containing approximately 286 words, near the end of a lengthy list of rights that ATXI seeks to include within its negotiated easements.

- (1) ATXI agrees to work with the OPC and Staff to include language in the notice letter sent to landowners when requesting an easement³ and in the Proposed Easement⁴ itself that identifies the full scope of the Grand Tower Project, specifically that it will be originally constructed as a 138-kV circuit with the potential to upgrade to a 345-kV circuit in the future.
- (2) ATXI agrees to remove the following language from its Proposed Easement: “together with the authority to extend to any other party the right to use, pursuant to the provisions hereof.”

Alternatively, the OPC requests that the Commission order a Procedural Schedule be issued.

III. Conclusion

Staff did not address the Proposed Easement in its Recommendation. However, the OPC is concerned that the language of the Proposed Easement is overbroad and attempts to circumvent the protections afforded by the expanded use statute. Therefore, the OPC requests that the Commission impose its two suggested conditions in addition to those recommended by Staff in its Recommendation, as modified by the Joint Recommendation. Alternatively, the OPC requests that the Commission order a Procedural Schedule in this matter.

³ The OPC understands that this initial notice letter will serve as the 60-day notice letter required to begin the eminent domain/condemnation process described in § 523.250 RSMo.

⁴ The OPC is aware that landowners may negotiate what is included in the language of the easement. Therefore, it limits its request to changes to the Proposed Easement that ATXI will initially propose to the landowners.

WHEREFORE, the OPC respectfully requests that the Commission impose its suggested conditions in addition to those recommended by Staff, as modified by the Joint Agreement, or order a Procedural Schedule.

Respectfully submitted,

/s/ Lindsay VanGerpen
Lindsay VanGerpen (#71213)
Senior Counsel

Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lindsay.VanGerpen@opc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing will be emailed to all counsel of record this 24th day of October 2025.

/s/ Lindsay VanGerpen