

**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

File No. EA-2025-0222

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’ SUR-REPLY
TO THE OFFICE OF PUBLIC COUNSEL’S “REPLY TO ATXI’S
RESPONSE TO OPC’S RESPONSE TO STAFF RECOMMENDATION”**

In its reply brief, the Office of Public Counsel (“OPC”) continues to advocate for its two proposed conditions—though with modification to the second—even though it has failed to adequately rebut the response by Ameren Transmission Company of Illinois (“ATXI”) opposing these conditions. The Commission should reject the OPC’s proposed conditions because they are not only unnecessary and unduly restrictive, the OPC’s proposal either places the authority to determine what those conditions require of ATXI in the hands of the OPC or, more likely, require resolution by this Commission in the end.

The issue before the Commission is very narrow—having to do with notice to the landowners regarding the scope of the easement sought by ATXI

and with certain language in the standard easement document that ATXI proposes to use in negotiating for easements from the fourteen individual affected property owners¹ on whose property the transmission line project will be built. With ATXI's sur-reply, both sides—the OPC and ATXI—will have had their say. Notably, there are ***no*** landowner intervenors² and the Commission Staff has not joined in the OPC's request. Consequently, this Commission can proceed with granting the CCN that ATXI requests with the conditions that the Commission deems appropriate—here, because the OPC has not offered any opposition to them, only those conditions agreed upon by Staff and ATXI, as memorialized in the Joint Recommendation filed by both parties.³

A. The OPC's proposed conditions *as modified*.

As modified by its November 26, 2025 response, the OPC—in its only opposition to the granting of a Certificate of Convenience and Necessity (“CCN”), proposes the following two conditions:

¹ Based on Schedule JS-03 [Item No. 5], there are fourteen landowners who have parcel(s) on the proposed route; however, this number includes persons with similar names that were differentiated by the Perry County Assessor with a middle initial or an unknown middle name. Depending on title work, ATXI expects the total individual landowner count to be eleven.

² In fact, the OPC does not and cannot point to any **single** landowner who has raised any concern about the easement language at issue here. And, upon information and belief, no one has filed a comment with the Commission on the issues raised by the OPC. Further, no member of the public who testified at either public hearing offered any testimony relating to the easement language or regarding notice of the Project. *See* File No. EA-2025-0222, Item No. 12 [Transcript-Volume 1 (Local Public Hearing – WebEx – August 18, 2025)], and Item No. 174 [Transcript-Volume 2 (Local Public Hearing – Altenburg, MO – August 26, 2025)]. This dispute is truly the OPC's alone.

³ File No. EA-2025-0222, Item No. 14.

1. ATXI agrees to work with the OPC and Staff to include language in the notice letter sent to landowners when requesting an easement and in the Proposed Easement 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” OR ATXI is required “to work with the OPC and the Staff to include language in the Landowner Letter that clearly and conspicuously identifies ‘this additional right⁴.’”

There is no compelling reason for the Commission to impose either of these two conditions.

B. The OPC’s first proposed condition is unnecessary.

The OPC asks this Commission to require ATXI to “work with” the OPC and Commission Staff (who have lodged no complaint with the notice letter or the easement language) to provide notice to the landowners of the possible future expansion of the Project and to restrict the easement document by including certain voltage restrictions. The OPC still has not provided the Commission with sound justification for either proposal.

1. The notice letter does what the OPC wants it to do.

While the OPC admits that the notice letter does the very thing its first condition proposes—give notice to the landowner that informs the landowner

⁴ The OPC does not offer the precise language for the modified condition it wants the Commission to impose.

of the possible expansion of the 138-kV line to a 345-kV line, the OPC identifies here for the first time its problem with the letter: its complaint is “how ATXI has chosen to incorporate” this notice. Perhaps suggesting some ill motive on the part of ATXI, the OPC finds fault with the language providing the landowner the very notice that OPC requests because it is “only” fourteen words, is “buried” in the middle of a paragraph of a two-page letter, and uses 10-point font.

As demonstrated in ATXI’s initial response, the second paragraph of the proposed letter, provided in ATXI’s response to OPC Data Request 55, clearly informs the landowner of the possibility of future expansion of the line:

The Project is construction of a new approximate 4-mile, 138 kV transmission line to connect Citizens Electric’s existing Wittenberg substation in Perry County, Missouri, across the Mississippi River to a new Jenkins substation near Ameren Illinois’ existing Grand Tower substation in Jackson County, Illinois. The Project will consist of a steel lattice tower on either side of the river with steel monopoles and associated facilities into each substation that that will improve grid reliability for local customers and support continued grown in the area, ***and have the ability to house a potential 345 kV transmission line in the future.*** The new transmission line construction is expected to begin in winter 2027 and anticipated to be in-service by December 2028.

This language does what the OPC is asking. Although the OPC asserts that “additional and clearer language” is needed in the letter, it offers no such language.

The paragraph containing the language has one topic—the description of the project. ATXI is not engaging in any artifice by placing the sentence in the paragraph. Part of that description is the possible future expansion of the line. While it is difficult to imagine “burying” anything in a short, two-page letter, ATXI can only assume that the landowners receiving this letter will act reasonably and read the letter. And, as ATXI has pointed out, this is not the first time that ATXI has made public its plan to construct the transmission project so that future expansion of the transmission line (adding an additional conductor to the towers) is a possibility—this information was provided to the public in both open houses and in public outreach meetings that ATXI held before the open houses.

ATXI is not engaging in any deceit by providing the notice letter to the landowners. Leaving aside the OPC’s design preferences, the proposed notice letter accomplishes what the OPC asks.

2. The proposed restriction to the easement language is inappropriate in a permanent easement for a particular use.

Even with the notice ATXI has provided in its public outreach efforts and in the two public hearings that the OPC requested in this case, the OPC points to possible landowner “confusion” that might arise if and when ATXI requests a new CCN for the expanded 345-kV transmission line. Oddly enough, the OPC attributes this confusion to a future event—when

“customers will presumably receive notice of the new case filed before the Commission (for expansion of the line to 345 kV), without ATXI contacting them to negotiate a new easement (which they will experience during the construction of the 138 kV line).”⁵

The OPC’s argument here is unclear. Of course, ATXI will comply with all notice requirements of the Commission should it file for a new CCN in the future. Having been advised by ATXI that the current Project may result in an expanded line in the future, what future confusion may arise is speculative. Indeed, the only confusion that the OPC identifies is that landowners will not be fully compensated for the easement ATXI seeks in *this* case. Whether a result of negotiation or a commissioner’s award in a condemnation action, the landowner will receive full compensation for the entire 150-foot-wide easement to accommodate the possible addition of that future conductor to the towers even though the current proposed 138-kV transmission line only requires a 100-foot-wide easement.⁶

The OPC readily dismisses ATXI’s concern with placing restrictive language in the easement document—claiming it to be “overstated” and “narrow.”⁷ As ATXI pointed out in its initial response, easements are the

⁵ OPC Reply [Item No. 26] at 5, n.10.

⁶ The necessary easement width to accommodate the transmission towers at the river crossing—whether the voltage is 138-kV or 345-kV—is 600 feet. Of course, the landowner will receive full compensation for the grant of that easement, as well.

⁷ *Id.* at 5, n.11.

grant of a right for a *particular purpose or particular use*.⁸ The proposed easement document here identifies that purpose or use—the placement of “electric and communication line or lines consisting of towers, poles, crossarms, guys, anchors, wires, cables, conduits, fixtures, foundations, footings and other appurtenances.”⁹ In other words, the purpose or use of the easement is to construct a transmission line.

ATXI’s concern that restricting the grant to a particular voltage is a real one: should future needs dictate that a line with voltage greater than a 345-kV line be constructed within the easement (and within the additional easement that ATXI would need to acquire to construct that line¹⁰), ATXI would be unable to utilize its existing easement to construct that line even though it would be for the same use or purpose. This concern is not overstated: as the OPC itself points out, it is the “easement itself . . . [that] is the legal document that gives ATXI the ability to install its transmission line on the landowners’ property[,]” and ATXI’s use would be restricted to the clear and unambiguous language in the easement.¹¹ OPC provides no response to this very real concern.

⁸ ATXI Response [Item No. 21] at 5-6.

⁹ ATXI Response [Item No. 21] at 6. As ATXI explained in its response—the communication lines are associated and necessary for the transmission of electricity. *Id.* at 12.

¹⁰ As ATXI explained in its initial response and as the OPC admits, the width of the easement acquired effectively dictates the voltage of the transmission line to be constructed within the easement; indeed, it does so here—a 345-kV line requires a 150-foot-wide easement; a higher voltage line would require ATXI to purchase an additional easement.

¹¹ OPC Reply [Item No. 26] at 4.

Finally, requiring such language in a utility easement would fundamentally change the nature of utility easements—in effect, making them temporary for a particular project rather than permanent for a particular use. As such, the OPC’s request is short-sighted and would be detrimental to future expansion of transmission projects in the state.

And again, the OPC offers no specific language that should be inserted into the easement. As a practical matter, a condition which requires the parties (only the OPC has raised this concern) to “work together” to “draft language that would make landowners aware of the full scope of the current project” is an extremely open-ended condition—and one that either results in the OPC being the decision-maker as to whether that condition has been fulfilled or, more likely, require ultimate resolution by the Commission given the nature of the dispute. There is no need or justification for requiring ATXI to include such restrictive language in the standard easement document.

C. The OPC’s second condition is equally unnecessary.

The OPC’s second proposed condition, in its current form, seeks to remove from the proposed standard easement the following language: “together with the authority to extend to any other party the right to use, pursuant to the provisions hereof” or, alternatively, require ATXI to “work with the OPC” and Commission Staff (who have not objected to the easement) to include additional language in the notice letter that identifies “this

additional right.”¹² The OPC fails here, too, to identify sufficient justification to impose such a condition.

The OPC appears to have abandoned its initial argument that the proposed easement language should be removed because it violates § 523.283, RSMo. As ATXI demonstrated in its initial response,¹³ the language does not violate the statute by allowing a “different type of use” of the easement. Even if this language—in a standard agreement that is yet subject to negotiation between the parties—resulted in an instance in which a utility would violate the statute through an improper expanded use, the law provides the landowners with a remedy. *See Barfield v. Sho-Me Power Elec. Coop.*, 852 F.3d 795, 805 (“ . . . § 528.293 specifically notes that ‘an action for trespass or expanded use’ is available against . . . utility companies that go beyond the scope of their easements”); § 528.293.4 (providing for an award of attorney fees and costs to a successful property owner). Consequently, there is no reason to order removal of the language to protect landowners from the imagined threat of improper expanded use by ATXI when they already have that protection under the law.

The OPC’s tact has now shifted in a different direction, arguing that the use that would be allowed by the easement language—authorizing ATXI

¹² *Id.* at 6-7.

¹³ ATXI Response [Item No. 21] at 9-13.

to extend a license to a third party to “use its easement” separate and apart from the construction of the transmission line.¹⁴ This is inaccurate. As ATXI explained in its initial response and in its responses to the OPC’s data requests, ATXI understands the proposed easement language at issue to allow it to license its *facilities*¹⁵—*not* the easement itself—to third parties, who must *first obtain their own easement rights from the landowner*.¹⁶ By making the grant explicit in the easement itself and by requiring third parties to obtain their own right to use a landowner’s property, ATXI is complying with the expanded use statute. Therefore, there is no reason for this Commission to order the removal of the language as a condition to its granting a CCN to ATXI for the Grand Tower Project.

But the OPC has proposed a new condition—that ATXI should notify the landowner in its notice letter of this right. The OPC again resorts to the suggestion that ATXI has somehow acted deceitfully when it “buried” this language in its easement document because it appears in the paragraph describing the rights granted under the easement. The format of the easement language—using several descriptions of the grant of rights in one

¹⁴ OPC Reply [Item No. 26] at 8.

¹⁵ Facilities would include the transmission towers, conductors, communication wires, and associated equipment owned by ATXI.

¹⁶ In its reply brief, the OPC acknowledges that ATXI would require any third-party licensee to obtain their own consent or right to use a landowner’s proper before its license with ATXI becomes operative. See OPC Reply [Item No. 26] at 7-8.

long sentence—is fairly standard, both in utility easements and, no doubt, in other types of easements. That the sentence is long does not in and of itself indicate that ATXI is somehow attempting to “bury” the particular language—no more than it is attempting to “bury” any other part of the grant language in the easement. And, as ATXI pointed out in its initial response, landowners can be relied on to not only carefully read the easement document but to also negotiate its contents and the value of the various rights it extends—including the very provision about which the OPC complains.¹⁷ The OPC’s mistrust of the landowners to read and negotiate the easement language and the value of the easement is unfounded.

It is one thing to ask ATXI to provide landowners in its notice letter of relevant information about the project that is ***not*** in the easement document itself; it is an entirely different thing to ask ATXI to describe in that notice letter the various legal terms in an easement when the parties have the easement language itself—which actually binds the parties—to read, seek legal advice if necessary, and negotiate from. Because the language itself is appropriate to the standard easement document, this Commission should not impose a condition striking this language. And because landowners can be trusted to read the easement document and, indeed, negotiate the terms of

¹⁷ ATXI Response [Item No. 21] at 13, n.20.

those easements, the OPC’s proposal that the parties “work together” to add additional language to the notice letter is unnecessary. And the same problem remains with this proposed condition—the satisfaction of the condition rests with the OPC and, more likely, with the Commission if the parties cannot agree.

The OPC—while not disputing that the project itself is in the public interest—has made it clear that its interest here is to protect the fourteen individual landowners,¹⁸ any of whom could have intervened in this Commission proceeding or who can yet retain attorneys to represent them in negotiations with ATXI if they have questions. ATXI respectfully suggests, however, that it is in the broader public interest—especially in rural areas such as this one—that telecommunication companies or wireless carriers be allowed to license transmission facilities to facilitate broadband or telecommunications if the landowner grants ATXI that right and after these third-party companies have obtained the necessary permissions to do so from the affected landowner.

D. Conclusion

There is no need for the Commission to order a procedural schedule. The only dispute here—raised by the OPC alone—has to do with the very

¹⁸ OPC Reply [Item No. 26] at 5 (implicitly acknowledging that the Project is in the public interest yet noting its concern for “the landowners affected by the project.”).

narrow issue of notice and easement language. Both sides have had their say. As ATXI has shown in its initial response and in this sur-reply, the OPC's proposed conditions are unnecessary, overly restrictive, and too indefinite. Therefore, ATXI respectfully requests that the Commission enter its Order granting the CCN with only those conditions requested by Staff as modified by the Joint Recommendation filed by Staff and ATXI on September 25, 2025.

Respectfully submitted,

/s/ Jason Kumar

Jason Kumar, MBN 64969
Assistant Corporate Counsel
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 243-8944 (phone)
(314) 554-4014 (fax)
JKumar@ameren.com

Eric Dearmont, MBN 60892
Director and Assistant General
Counsel
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 749-9275 (phone)

/s/ Michael R. Tripp

Michael R. Tripp, MBN 41535
JBL Law, LLC
9020 S. Barry Road
Columbia, MO 65201
(573) 476-0050
tripp@jblawllc.com

**Attorneys for Ameren
Transmission Company of
Illinois**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the Staff of the Commission and the Office of the Public Counsel via electronic mail (e-mail) on this 2nd day of December 2025.

/s/ Michael R. Tripp
Attorney for Ameren Transmission
Company of Illinois