

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements
ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under section 386.250, RSMo 2016, the commission rescinds a rule as follows:

4 CSR 240-3.105 Filing Requirements for Electric Utility Applications for Certificates of Convenience and Necessity **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 979). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 14, 2018, and the commission held a public hearing on the proposed rescission on June 19, 2018. The commission received timely written comments from the staff of the commission; the Office of the Public Counsel; Dogwood Energy, LLC; Union Electric Company, d/b/a Ameren Missouri; Ameren Transmission Company of Illinois (ATXI); Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCP&L/GMO); The Empire District Electric Company; the Missouri Division of Energy; and Wind on the Wires. Kevin Thompson, representing the commission's

staff, and Natelle Dietrich, on behalf of staff; Hampton Williams, Public Counsel; James Fischer, representing KCP&L/GMO; Paul Boudreau, representing Empire; Marc Poston, representing the Division of Energy; Sean Brady, representing Wind on the Wires; James Lowery, representing Ameren Missouri and ATXI, and Thomas Byrne, on behalf of Ameren Missouri, appeared at the hearing and offered comments.

The commission has proposed to rescind this Chapter 3 rule, revise its contents, and promulgate a new rule in Chapter 20. Most of the comments address the provisions of the new Chapter 20 rule and will be addressed in the final order of rulemaking for that rule. Only those comments regarding the rescission of the Chapter 3 rule will be addressed in this order of rulemaking.

COMMENT #1: Staff explained that the rescission of this Chapter 3 rule and the promulgation of a new Chapter 20 rule is designed to simplify the commission's rules by combining most, if not all, electric-only rules into a single electric utility chapter.

RESPONSE: The commission thanks staff for its explanation.

COMMENT #2: Public Counsel's written comment points out that the rescission of the Chapter 3 rule and its re-promulgation as a Chapter 20 rule is contrary to the commission's stated intent when it created Chapter 3 in 2002 to gather all procedural requirements for all utilities into a single chapter of its rules.

RESPONSE: The commission has changed its view on the collection of all procedural requirements for all utilities into a single chapter of its rules. The commission's experience since 2002 has shown that collecting all procedural requirements into a single chapter has created more confusion than it relieved as stakeholders must consult two (2) or more distinct chapters of the rules to be sure they have found all relevant rule requirements. The commission will continue to move those Chapter 3 procedural rules that affect a single utility classification into the rules that apply to that utility classification as it is appropriate to do so.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities
ORDER OF RULEMAKING**

By the authority vested in the Public Service Commission under section 386.250, RSMo 2016, the commission adopts a rule as follows:

4 CSR 240-20.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on May 15, 2018 (43 MoReg 979-981). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended June 14, 2018, and the commission held a public hearing on the proposed rule on June 19, 2018. The commission received timely written comments from the staff of the commission; the Office of the Public Counsel; Dogwood Energy, LLC; Union Electric Company, d/b/a Ameren Missouri; Ameren Transmission Company of Illinois (ATXI); Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCP&L/GMO); The Empire District Electric Company; the Missouri Division of Energy; and Wind on the Wires. Kevin Thompson, representing the commission's

staff, and Natelle Dietrich, on behalf of staff; Hampton Williams, Public Counsel; James Fischer, representing KCP&L/GMO; Paul Boudreau, representing Empire; Marc Poston, representing the Division of Energy; Sean Brady, representing Wind on the Wires; James Lowery, representing Ameren Missouri and ATXI, and Thomas Byrne, on behalf of Ameren Missouri, appeared at the hearing and offered comments.

COMMENT #1: Subsection (1)(A) defines the term “acquire or acquisition” for purposes of the rule. This definition would be necessary if other provisions of the rule require an electric utility to seek a certificate of convenience and necessity, a CCN, when it acquires existing electric plant from some other entity. Ameren Missouri, KCP&L/GMO, and Public Counsel oppose what they believe is an improper expansion of the commission’s statutory authority to require an electric utility to obtain a CCN before acquiring existing electric plant and thus would delete this definition as unnecessary. During the hearing, staff suggested that the rule be modified to require an electric utility to obtain a CCN when it wants to “operate” existing electric plant that it does not already own, rather than when it seeks to “acquire” such plant. With that change, staff also supports the elimination of this definition. Dogwood would keep the definition, but would insert the word “obtaining” into the definition.

RESPONSE AND EXPLANATION OF CHANGE: The commission will strike the definition of “acquire or acquisition” from the rule and instead will refer to “operation” throughout the rule. Subsequent provisions of the section will be renumbered accordingly.

COMMENT #2: Subsection (1)(B) defines the term “asset,” which are the items of electric plant for which the rule requires an electric utility to seek a CCN. Ameren Missouri and KCP&L/GMO would eliminate the aspects of the definition that would define asset as including assets located outside the state of Missouri, as well as existing assets to be “acquired,” as addressed in comment #1. Dogwood would add “switching station” and “electric transmission line” to the list of described assets. Public Counsel would define “generating plant asset” rather than “asset.” In addition, Public Counsel, as well as Ameren Missouri, expressed concern that use of the word “includes” at the start of the definition is ambiguous in that it does not make it clear whether the definition is exhaustive. Ameren Missouri explains that the utilities must be certain whether they will be required to seek a CCN for a particular project or else they will need to seek a CCN for every project in order to protect themselves from allegations of failing to obtain a CCN when one is needed.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify the definition of asset to clarify that it includes electric generating plant that is expected to serve Missouri customers and will be included in the applicant’s rate base used to set rates for Missouri customers, whether that plant is in or outside the utility’s existing service territory and in or outside the state of Missouri. The definition will further clarify that a transmission or distribution asset for which a CCN is required would include only assets located outside the utility’s existing service area, but within Missouri. The definition will also be clarified to demonstrate the exhaustive nature of the list by changing “includes” at the start of the definition to “means.”

COMMENT #3: Subsection (1)(C) and its constituent paragraphs and subparagraphs seek to define the term “construction” by specifying five (5) projects that would fit the definition. Again, Public Counsel and Ameren Missouri express concern that use of “includes” at the start of the definition is ambiguous.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change “includes” to “means” at the beginning of the definition to avoid any ambiguity.

COMMENT #4: Paragraph (1)(C)2. would include as “construction,” construction of a new electric transmission line or a rebuild of a transmission line if it would result in a significant increase in the

capacity of the line, or if there is a change in the route or easements associated with the line. Ameren Missouri is concerned this definition would result in an increase in the number of CCNs required by the rule. Additionally, Ameren Missouri is concerned that the term “significant” is ambiguous and does not provide clear guidance on when a CCN will be required. Further, Ameren Missouri, Empire, and KCP&L/GMO indicate the expansion of the definition of construction to include any “rebuild” of an existing asset is contrary to the statute’s requirement for a CCN before beginning “construction.” They contend an asset that is being rebuilt has already been constructed and therefore the statute does not give the commission authority to require a CCN. In addition, Ameren Missouri argues the definition of “construction” must not include any project within the electric utility’s existing service area because to do so would increase the number of CCNs required by the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission will substantially rewrite the definition of construction in response to the concerns raised in the comments. However, the commission continues to believe a substantial improvement, retrofit, or rebuild of an electric asset does require the issuance of a CCN. To avoid the problems identified by the commenters, the commission will limit the CCN requirement for such projects to those that would increase the utility’s established rate base by ten percent (10%) or more.

COMMENT #5: Paragraph (1)(C)3. would define as construction for which a CCN is required, construction of a new substation or the rebuild of an existing substation that would result in a significant increase in capacity or size of the substation. Again, Ameren Missouri is concerned that this definition would result in an increase in the number of CCNs required by the rule. Additionally, Ameren Missouri is concerned that the term “significant” is ambiguous and does not provide clear guidance on when a CCN will be required. Further, Ameren Missouri, Empire, and KCP&L/GMO indicate the expansion of the definition of construction to include any “rebuild” of an existing asset is contrary to the statute’s requirement for a CCN before beginning “construction.” They contend that an asset that is being rebuilt has already been constructed and therefore the statute does not give the commission authority to require a CCN. In addition, Ameren Missouri argues the definition of “construction” must not include any project within the electric utility’s existing service area because to do so would increase the number of CCNs required by the rule.

RESPONSE AND EXPLANATION OF CHANGE: See the response to comment #4. This particular paragraph has been removed from the rule.

COMMENT #6: Paragraph (1)(C)4. would define as construction for which a CCN is required, construction or rebuild of a gas transmission line that facilitates the operation of an electric generating plant. Again, Ameren Missouri is concerned that this definition would result in an increase in the number of CCNs required by the rule. Additionally, Ameren Missouri is concerned that the term “significant” is ambiguous and does not provide clear guidance on when a CCN will be required. Further, Ameren Missouri, Empire, and KCP&L/GMO indicate the expansion of the definition of construction to include any “rebuild” of an existing asset is contrary to the statute’s requirement for a CCN before beginning “construction.” They contend that an asset that is being rebuilt has already been constructed and therefore the statute does not give the commission authority to require a CCN. In addition, Ameren Missouri argues the definition of “construction” must not include any project within the electric utility’s existing service area because to do so would increase the number of CCNs required by the rule.

RESPONSE AND EXPLANATION OF CHANGE: See the response to comment #4. This particular paragraph has been removed from the rule.

COMMENT #7: Paragraph (1)(C)5. and subparagraphs A.–D. would

define as construction for which a CCN is required, an improvement or retrofit of an electric generating plant that will substantially increase the capacity of the generating plant, materially change the discharges of the plant, increase the useful life of the plant, or increase the utility's rate base by ten percent (10%). Again, Ameren Missouri is concerned that this definition would result in an increase in the number of CCNs required by the rule. Additionally, Ameren Missouri is concerned that the term "significant" is ambiguous and does not provide clear guidance on when a CCN will be required. Further, Ameren Missouri, Empire, and KCP&L/GMO indicate the expansion of the definition of construction to include any "rebuild" of an existing asset is contrary to the statute's requirement for a CCN before beginning "construction." They contend that an asset that is being rebuilt has already been constructed and therefore the statute does not give the commission authority to require a CCN. In addition, Ameren Missouri argues the definition of "construction" must not include any project within the electric utility's existing service area because to do so would increase the number of CCNs required by the rule. Ameren Missouri is also concerned that subparagraph (1)(C)5.D. does not establish a clear baseline to measure a ten percent (10%) increase in the utility's rate base.

RESPONSE AND EXPLANATION OF CHANGE: See the response to Comment #4. This paragraph and its subparagraphs have been removed from the rule, except for subparagraph (1)(C)5.D.'s provision that requires a CCN application for the improvement, retrofit, or rebuild of an asset that will increase the utility's total rate base by ten percent (10%). A baseline has also been established for which to measure the ten percent (10%) increase.

COMMENT #8: Subsection (1)(D) and its constituent paragraphs seek to define what projects are not "construction" and therefore do not require a CCN. Paragraph (1)(D)1. exempts construction of new electric or gas transmission lines if the lines are to be constructed within the electric utility's Missouri certificated service area. Ameren Missouri points out a contradiction between the exemption offered by this paragraph and paragraphs (1)(C)2. and 4., which would require a CCN for such projects. Ameren Missouri urges the commission to amend the rule so that no CCN is required for such projects within the electric utility's service area. Dogwood would add "substation," and "switching station" to the list of exempted projects.

RESPONSE AND EXPLANATION OF CHANGE: The commission will modify this provision of the rule to exclude from the definition of construction the new electric or gas transmission lines constructed within the utility's certificated service lines. Such projects are no longer included within the definition of construction so they no longer need to be excluded in this subsection.

COMMENT #9: Paragraph (1)(D)3. exempts from construction CCN transmission projects where the only relationship to Missouri ratepayers is through the Regional Transmission Organization (RTO) cost allocation process. Public Counsel and Wind on the Wires express concern that this definition is unclear. Neither propose a language change, but Wind on the Wires suggests the commission clarify that the paragraph encompasses Midcontinent Independent System Operator (MISO's) Market Efficiency Projects, Multi-Value Projects, Generator Interconnection projects that are cost shared, and inter-regional projects. Dogwood proposes a language change to tie the relationship to retail rates paid by Missouri ratepayers through a regional cost allocation.

RESPONSE AND EXPLANATION OF CHANGE: See the response to comment #4. This paragraph has been removed from the rule.

COMMENT #10: ATXI proposes to add a definition of "non-incumbent electric provider" to describe such a provider as "a Federal Energy Regulatory Commission-regulated transmission company that does not serve Missouri retail customers." The Division of Energy suggests a definition of "non-incumbent electric provider" is needed

to ensure the rule's provisions do not apply to individual residential, small commercial, or industrial customers who own their own generating resources. Ameren Missouri, KCP&L/GMO, Wind on the Wires, and Division of Energy support ATXI's proposed definition. **RESPONSE AND EXPLANATION OF CHANGE:** The commission will not add the proposed definition, but, instead, will not use the term "non-incumbent electric provider" within the rule.

COMMENT #11: Dogwood proposes a new subsection (2)(A) that would clearly describe and summarize the requirements of the rule by stating when an electric utility must obtain a CCN. Ameren Missouri opposes any provision that would purport to expand the CCN requirements stated in the controlling statute. At the hearing, staff agreed with much of Dogwood's proposal.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Dogwood and its staff and will add a new section (2) that succinctly describes when an electric utility must obtain a certificate of convenience and necessity. In addition, because the rule addresses more than just filing requirements, the commission will revise the title of the rule to remove "Filing Requirements for" from the beginning of the title.

COMMENT #12: Public Counsel proposes that the opening statement of section (2) be clarified to make it clear that the additional general requirements of the rule apply only to CCN applications filed by electric utilities.

RESPONSE: The entire rule explicitly applies to electric utilities and there is no need to repeat that fact here. The commission will make no change in response to this comment.

COMMENT #13: Dogwood proposes to change the wording in subsection (2)(A) to require an application to show that granting the application is necessary *and* convenient, rather than necessary *or* convenient.

RESPONSE: The controlling statute requires a showing of necessary *or* convenient. The commission will make no change in response to this comment.

COMMENT #14: Dogwood offers a new subsection (2)(B) that would require an applicant for a CCN to produce evidence that it has complied with all applicable municipal ordinances. Ameren Missouri opposes that suggestion.

RESPONSE: There is no need to explicitly require the additional evidence suggested by Dogwood. The commission will make no change in response to this comment.

COMMENT #15: Ameren Missouri proposes to strike existing subsection (2)(B) because it would apply only to assets acquired or constructed outside Missouri, which Ameren Missouri contends is an unlawful expansion of the commission's statutory authority. Empire and Public Counsel share that position.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes the controlling statute gives it authority to require a CCN where the asset to be constructed or operated is outside this state if it is expected to serve Missouri customers and will be included in the utility's rate base. The word "acquired" will be changed to "operated." See the response to comment #1.

COMMENT #16: Dogwood would make the reference to jurisdiction in subsection (2)(B) plural in recognition of the fact that multiple jurisdictions might be affected.

RESPONSE: Dogwood's proposed change is unnecessary. The commission will make no change in response to this comment.

COMMENT #17: Ameren Missouri proposes to modify subsection (2)(C) to eliminate the sentence that requires initially unavailable items be provided to the commission before authority under the certificate is exercised. In its place, it would require that items needed

to perform a specific portion of the construction is obtained and filed before that portion of the construction commences. KCP&L/GMO commented that the subsection as proposed was a proper clarification. It did not respond to Ameren Missouri's proposed modification. RESPONSE: The concerns raised by Ameren Missouri are addressed in the proposed rule and additional clarification is unnecessary. The commission will make no change in response to this comment.

COMMENT #18: Public Counsel notes that subsections (2)(D) and (E) are not general requirements in the same way that subsection (2)(A), (B), and (C) are and suggests they be moved to a different position within the rule.

RESPONSE AND EXPLANATION OF CHANGE: Public Counsel's comment is well taken. Subsections (2)(D) and (E) have been moved to new section (2) and have been renumbered as (2)(B) and (C).

COMMENT #19: Subsection (2)(E) recognizes the commission's authority to make a decisional prudence determination about a decision to construct or acquire electric plant. Ameren Missouri supports the concept of a decisional prudence determination, but would remove references in the rule to acquisition of assets, limiting it to construction only, and would also eliminate the references to specific types of assets. Dogwood proposes a similar edit. KCP&L/GMO takes issue with the portion of the subsection that references a "post-construction review of the project." It would add a clarification that such a review would take place within a subsequent general rate case, not within the CCN application case. Public Counsel would eliminate the subsection because presumably the commission would never approve a CCN where the proposal was contrary to the public interest.

RESPONSE AND EXPLANATION OF CHANGE: The commission has rewritten this subsection, which is now (2)(C), in response to the comments. It will now apply to the operation or construction of "assets." It also clarifies that the determination of decisional prudence will be subject to a "subsequent" review.

COMMENT #20: Ameren Missouri would specifically limit application of section (3) to Missouri service areas of the utility.

RESPONSE AND EXPLANATION OF CHANGE: The commission will not make the change proposed by Ameren Missouri, but will limit application of the section to applications for an area certificate pursuant to section 393.170.2, RSMo.

COMMENT #21: Subsection (3)(A) as proposed requires the application for a CCN to provide a map that identifies where each other entity providing electric service in the area to be certificated is currently providing retail electric service. Public Counsel suggests the map to be provided in subsection (3)(A) be at the same scale as the detailed plat map of the proposed service area required by subsection (3)(D).

RESPONSE: Public Counsel's suggestion regarding the scale of the map is unnecessary. The commission will make no change in response to this comment.

COMMENT #22: Subsection (3)(C) as proposed requires the submission of "the legal description of the service area to be certificated." Public Counsel would change that to "a legal description" in recognition that there may be more than one (1) way to legally describe the service area.

RESPONSE: The commission will make no change in response to this comment.

COMMENT #23: Dogwood proposes to add a reference to "leasing" to the reference to proposed financing in the description of "feasibility study" found in subsection (3)(E). Ameren Missouri opposes that change as capital leases are a means of financing and adding the reference would generate confusion.

RESPONSE AND EXPLANATION OF CHANGE: The commission will make no change in response to this comment. However, the

requirement that the application include a three- (3-) year estimate of construction costs is unnecessary and will be removed from the rule.

COMMENT #24: Dogwood would add a new subsection (3)(F) that would require the applicant to provide a copy of its charter. Ameren Missouri opposes that requirement as unnecessary.

RESPONSE: Dogwood's proposal is unnecessary. The commission will make no change in response to this comment.

COMMENT #25: Dogwood would add a new subsection (3)(G) that would require the applicant to provide a verified statement of the president or secretary of the corporation showing it has received the required consent of the proper municipal authorities. Ameren Missouri opposes that requirement as unnecessary.

RESPONSE: Dogwood's proposal is unnecessary. The commission will make no change in response to this comment.

COMMENT #26: Section (4) describes what is to be filed as part of an application for a CCN to acquire an existing asset. The proposed language describes an application to "acquire assets." Dogwood suggests that be changed to "acquire an asset."

RESPONSE AND EXPLANATION OF CHANGE: The commission will change "acquire" to "operated." See the response to comment #1.

COMMENT #27: Ameren Missouri, KCP&L/GMO, and Empire urge the Commission to delete the entire section (4) because they believe requiring the utilities to seek a CCN when seeking to acquire an existing asset is beyond the authority granted to the commission by the controlling statute.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change "acquire" to "operated." See the response to comment #1.

COMMENT #28: Subsection (4)(A) requires an application to acquire assets include a description of the asset to be acquired. Dogwood advises the commission to add "including location" to that requirement.

RESPONSE: The change proposed by Dogwood is unnecessary. The commission will make no change in response to this comment.

COMMENT #29: Subsection (4)(C) requires an application to acquire assets to include the purchase price and plans for financing the acquisition. Dogwood would add "or the terms of the proposed capital lease" to the requirement. Ameren Missouri opposes that change as unnecessary as a capital lease would be a part of the plan for financing the acquisition. Ameren Missouri says that if the language is included, it should say "including the terms of any capital lease used in the financing."

RESPONSE: The change proposed by Dogwood is unnecessary. The commission will make no change in response to this comment.

COMMENT #30: Subsection (4)(D) requires an application to acquire assets to include "plans and specifications for the utility system." Dogwood suggests the reference to "utility system" is undefined and should be changed to "asset."

RESPONSE AND EXPLANATION OF CHANGE: The commission will make the change proposed by Dogwood.

COMMENT #31: Dogwood asks the commission to add a new subsection (4)(E) to require an application to acquire assets to include evidence that the electric utility has used a competitive bidding process to evaluate other reasonable alternatives. Ameren Missouri opposes that proposal.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with Dogwood's proposal to create a new subsection to require submission of evidence that competitive bidding has been used. However, the commission will incorporate a new subsection

(6)(H) that addresses competitive bidding.

COMMENT #32: Section (5) describes what is to be filed as part of an application for a CCN to construct an asset. Dogwood asks the commission to include language to clarify that this section does not apply to applications for CCNs to construct electric or gas transmission lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission disagrees with Dogwood's comment, but will clarify that the rule applies to applications for a line certificate under section 393.170.1, RSMo.

COMMENT #33: Dogwood suggests subsection (5)(B) be modified to require a list of shared easements be included along with information about other facilities that will be affected by the proposed construction.

RESPONSE: Dogwood's suggested revision is unnecessary. The commission will make no change in response to this comment.

COMMENT #34: Dogwood suggests subsection (5)(C) be modified to refer to "asset" in place of "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant." Ameren Missouri makes the same suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment and will make the proposed change to this subsection.

COMMENT #35: Dogwood suggests subsection (5)(D) be modified to refer to "asset" in place of "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant." Ameren Missouri makes the same suggestion. Empire suggests the entire subsection be deleted as unnecessary and unworkable.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This requirement will appear as subsection (5)(D) in the final rule. See response to comment #47. Because of that consolidation, this subsection is unnecessary and will be removed from the rule.

COMMENT #36: Subsection (5)(E) directs the applicant for a CCN to submit "an indication" of certain information. Public Counsel and Ameren Missouri suggest "an indication" be changed to "a statement." Ameren Missouri suggests the subsection be modified to refer to "asset" in place of "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant." Dogwood would simplify the subsection to require "A description of any common plan included in the construction project."

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This requirement will appear as subsection (5)(E) in the final rule. See response to comment #48. Because of that consolidation, this subsection is unnecessary and will be removed from the rule.

COMMENT #37: Subsection (5)(F) directs the applicant for a CCN to submit its plans for financing the asset to be constructed. Dogwood suggests the reference to "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant" be changed to "asset." Ameren Missouri suggests the phrase be changed to "project."

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This requirement will appear as subsection (5)(F) in the final rule. See response to comment #49. Because of that consolidation, this subsection is unnecessary and will be removed from the rule.

COMMENT #38: Subsection (5)(G) directs non-incumbent electric providers that are applying for a CCN to submit an overview of their plans for operating and maintaining the proposed asset. Dogwood suggests the reference to "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant" be changed to "asset." Ameren Missouri makes the same suggestion. Dogwood and Division of Energy also express concern about the phrase "non-incumbent electric provider," suggesting it could be better defined. Public Counsel suggests the requirement of the subsection should not be limited to non-incumbent electric providers, however that phrase is defined.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This requirement will appear as subsection (5)(I) in the final rule. See response to comment #50. Because of that consolidation, this subsection is unnecessary and will be removed from the rule.

COMMENT #39: Subsection (5)(H) directs non-incumbent electric providers that are applying for a CCN to submit an overview of their plans for restoration of service after an unplanned outage. Dogwood suggests the reference to "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant" be changed to "asset." Ameren Missouri makes the same suggestion. Dogwood and Division of Energy also express concern about the phrase "non-incumbent electric provider," suggesting it could be better defined. Public Counsel suggests the requirement of the subsection should not be limited to non-incumbent electric providers, however that phrase is defined.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This requirement will appear as subsection (5)(J) in the final rule. See response to comment #51. Because of that consolidation, this subsection is unnecessary and will be removed from the rule.

COMMENT #40: Subsection (5)(I) would require an applicant for a CCN to submit evidence demonstrating that it used a non-discriminatory process to evaluate whether distributed energy resources, energy efficiency, or renewable energy resources would provide a reasonable alternative to the proposed construction. Dogwood and Division of Energy express concern about the phrase "non-incumbent electric provider," suggesting it could be better defined. Public Counsel suggests the reference to "electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant" be changed to "asset." Empire suggests this requirement should be incorporated into the requirements of subsection (2)(E), and Ameren Missouri argues the entire subsection should be removed from the rule as an unnecessary duplication of the commission's Integrated Resource Planning rules in Chapter 22.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of "asset" found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. This subsection will be removed from the rule. A new subsection (5)(G) will be included in the final rule which will require only that the applicant provide a description of how the proposed asset relates to the utility's adopted preferred resource plan filed under the commission's Chapter 22 rules.

COMMENT #41: Subsection (5)(J) would require an applicant for a CCN to submit evidence demonstrating that it used a non-discriminatory competitive bidding process to evaluate whether purchased power or alternative energy supplies would be a reasonable alternative to the proposed construction. Dogwood expresses concern about the phrase "non-incumbent electric provider," suggesting it could be better defined. Dogwood also proposes some changes to the wording of the subsection. Empire suggests this requirement should be incorporated into the requirements of subsection (2)(E), Ameren Missouri and KCP&L/GMO argue the entire subsection should be removed

from the rule. Wind on the Wires supports the bidding requirement, and the Division of Energy does not oppose that requirement, but welcomes the economic benefits that result from construction in Missouri.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of “asset” found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. The subsection requiring competitive bidding will be removed from the rule. See response to comment #53. Subsection (5)(H) in the final rule relates to competitive bidding, but requires only an overview of whether and how such bidding was used in the planning of the project.

COMMENT #42: Subsection (5)(K) would require an applicant for a CCN to submit evidence demonstrating that it utilized or will utilize a competitive bidding process for entering into contracts related to the construction project. Dogwood expresses concern about the phrase “non-incumbent electric provider,” suggesting it could be better defined. Dogwood also suggests the reference to “electric generating plant, substation, or gas transmission line that facilitates the operation of electric generating plant” be changed to “asset.” Ameren Missouri and KCP&L/GMO argue the entire subsection should be removed from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The new definition of “asset” found in subsection (1)(A) makes the distinction between sections (5) and (6) unnecessary. See response to comment #43. The subsection requiring competitive bidding will be removed from the rule. See response to comment #53. Subsection (5)(H) in the final rule relates to competitive bidding, but requires only an overview of whether and how such bidding was used in the planning of the project.

COMMENT #43: Section (6) describes additional information to be filed as part of an application for a CCN to acquire or construct an electric transmission line. Dogwood would expand the requirements of the section to the acquisition or construction of a natural gas transmission line used to serve an electric generating asset. Ameren Missouri and Empire would limit application of the section to proposed construction projects, not acquisition of existing transmission lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that including a separate section of the rule regarding applications to construct a transmission line is unnecessary. The relevant portions of section (6) will be incorporated into section (5) regarding applications for a line certificate under section 393.170.1, RSMo.

COMMENT #44: Ameren Missouri suggests subsections (6)(A)–(I) be removed from the rule as duplicative since a transmission line is also an asset covered under section (5).

RESPONSE AND EXPLANATION OF CHANGE: See response to comment #43.

COMMENT #45: Dogwood suggests subsection (6)(B) be modified to require a list of shared easements be included along with information about other facilities that will be affected by the proposed construction.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes this subsection is unnecessary and will remove it from the rule.

COMMENT #46: Dogwood suggests application of subsection (6)(C) not be limited to electric transmission lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes this subsection is unnecessary and will remove it from the rule.

COMMENT #47: Dogwood suggests application of subsection (6)(D) not be limited to electric transmission lines. Empire argues

the rule should not require projected completion dates for the proposed construction.

RESPONSE AND EXPLANATION OF CHANGE: The commission will change the subsection to apply to “asset,” not just electric transmission lines. The requirement to describe projected completions dates is necessary and will not be deleted from the rule.

COMMENT #48: Subsection (6)(E) directs the applicant for a CCN to submit “an indication” of certain information. Dogwood would simplify the subsection to require “A description of any common plant included in the construction project.” Public Counsel asks what is a common electric transmission line?

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt Dogwood’s proposed simplification of the requirement.

COMMENT #49: Dogwood suggests application of subsection (6)(F) not be limited to electric transmission lines.

RESPONSE AND EXPLANATION OF CHANGE: The commission will adopt Dogwood’s suggestion and will change “electric transmission line” to “asset.”

COMMENT #50: Subsection (6)(G) directs non-incumbent electric providers that are applying for a CCN to submit an overview of their plans for operating and maintaining the proposed electric transmission line. Dogwood and Division of Energy express concern about the phrase “non-incumbent electric provider,” suggesting it could be better defined. Public Counsel suggests the requirement of the subsection should not be limited to non-incumbent electric providers, however that phrase is defined. Dogwood also suggests application of the subsection not be limited to electric transmission lines.

RESPONSE AND EXPLANATION OF CHANGE: The application of the subsection will be expanded by changing “electric transmission line” to “asset.” The phrase “non-incumbent electric provider” has been removed from the rule.

COMMENT #51: Subsection (6)(H) directs non-incumbent electric providers that are applying for a CCN for an electric transmission line to submit an overview of their plans for restoration of service after an unplanned outage. Dogwood and Division of Energy express concern about the phrase “non-incumbent electric provider,” suggesting it could be better defined. Dogwood also suggests application of the subsection not be limited to electric transmission lines. Public Counsel suggests the requirement of the subsection should not be limited to non-incumbent electric providers, however that phrase is defined.

RESPONSE AND EXPLANATION OF CHANGE: The application of the subsection will be expanded by changing “electric transmission line” to “asset.” The phrase “non-incumbent electric provider” has been removed from the rule. This subsection is (5)(I) in the final rule.

COMMENT #52: Subsection (6)(I) would require an applicant for a CCN for an electric transmission line to submit evidence demonstrating that it utilized or will utilize a competitive bidding process for entering into contracts related to the construction project. Dogwood expresses concern about the phrase “non-incumbent electric provider,” suggesting it could be better defined. Dogwood also suggests application of the subsection not be limited to electric transmission lines. Empire suggests this requirement should be incorporated into the requirements of subsection (2)(E), Ameren Missouri and KCP&L/GMO oppose the bidding requirement and argue the entire subsection should be removed from the rule.

RESPONSE AND EXPLANATION OF CHANGE: The subsection requiring competitive bidding has been removed from the rule. New subsection (5)(H) relates to competitive bidding, but requires only an overview of whether and how such bidding was used in the planning of the project.

COMMENT #53: Subsection (6)(J) and paragraphs (6)(J)1.-4. describe the notice that an applicant for a CCN to acquire or construct an electric transmission line is to provide to residents along the route of the transmission line. The Division of Energy indicated its support for the rule as proposed. Dogwood generally supports the notice requirement, but proposes modified language that would expand the notice requirement to include natural gas transmission pipelines as well as electric transmission lines. Ameren Missouri opposes that expansion of the rule. Public Counsel would also expand the rule to require notice regarding natural gas transmission lines, and would add a notice requirement when a new generating plant or associated substation is proposed. Ameren Missouri supports the concept behind the notice requirement, but would modify the rule's language to make it clear that the rule does not give landowners an enforceable right to receive actual notice.

RESPONSE AND EXPLANATION OF CHANGE: The commission believes the notice requirements are appropriate as proposed and will not modify the rule except to clarify that it applies to "transmission" substation locations as well as electric transmission line routes.

COMMENT #54: KCP&L/GMO suggests the reference to "notice" in subsection (6)(J) and in paragraph (6)(J)1. be expanded to "notice of the application."

RESPONSE AND EXPLANATION OF CHANGE: The commission believes the notice requirements are appropriate as proposed and will not modify the rule except to clarify that it applies to "transmission" substation locations as well as electric transmission line routes.

COMMENT #55: KCP&L/GMO and Dogwood propose to change "any letter" in paragraph (6)(J)2. to "notice" or "notice of the application."

RESPONSE AND EXPLANATION OF CHANGE: The commission believes the notice requirements are appropriate as proposed, but the term "letter" in this paragraph is potentially confusing and will be changed to "notice of the application."

COMMENT #56: KCP&L/GMO suggests paragraph (6)(J)2. be revised to change all references to "utility" to "applicant."

RESPONSE: The proposed change is unnecessary. The commission will make no change in response to this comment.

COMMENT #57: KCP&L/GMO suggests all references to "persons" in paragraphs (6)(J)3. and 4. be changed to "landowners."

RESPONSE: The proposed change is unnecessary. The commission will make no change in response to this comment.

COMMENT #58: KCP&L/GMO suggests paragraph (6)(J)3. be clarified to distinguish the public meeting required by the rule from a public hearing conducted by the commission.

RESPONSE: The proposed change is unnecessary. The commission will make no change in response to this comment.

COMMENT #59: Wind on the Wires proposes the commission create a new section that would explicitly afford an applicant the ability to request expedited treatment for its application.

RESPONSE: An applicant may request expedited treatment under the commission's general rules of procedure and it is not necessary to include a reminder of such procedures in this rule. The commission will make no changes in response to this comment.

COMMENT #60: The Division of Energy and Public Counsel pointed out that the proposed rule should be revised to incorporate the provisions of SB-564, which will go into effect before the rule will become effective.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (1)(D), the provision that excludes certain assets from the definition of construction for which a CCN is required, has been modified to incorporate the provisions of SB-564, including the exemption of pro-

jects with a capacity of one (1) megawatt or less and the construction of utility-owned solar facilities.

COMMENT #61: Ameren Missouri suggests a new section to require the applicant to file additional information where a different legal entity will own the asset during construction before transferring it to the utility when construction is completed.

RESPONSE: The proposed change is unnecessary. The commission will make no change in response to this comment.

COMMENT #62: Ameren Missouri expressed concern that what it described as an expansion of the authority under the statute to require a CCN where none has been required in the past would call into question the legitimacy of existing electric assets that do not have a CCN.

RESPONSE AND EXPLANATION OF CHANGE: The commission does not intend for this rule to impose any additional requirements on existing assets. A statement to that effect has been added to section (7).

COMMENT #63: Ameren Missouri challenges the accuracy of the private cost determination that the proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

RESPONSE AND EXPLANATION OF CHANGE: The commission has made many modifications in this rule that will have the effect of reducing the regulatory costs that would have been imposed by the rule as proposed. The commission has reassessed the cost of the final rule and a revised private cost fiscal note has been prepared and is attached to this final order of rulemaking.

4 CSR 240-20.045 Electric Utility Applications for Certificates of Convenience and Necessity

PURPOSE: This proposed rule outlines the requirements for applications to the commission, pursuant to section 393.170.1 and 393.170.2, RSMo, requesting that the commission grant a certificate of convenience and necessity to an electric utility for a service area or to operate or construct an electric generating plant, an electric transmission line, or a gas transmission line that facilitates the operation of an electric generating plant.

(1) Definitions. As used in this rule, the following terms mean:

(A) Asset means:

1. An electric generating plant, or a gas transmission line that facilitates the operation of an electric generating plant, that is expected to serve Missouri customers and be included in the rate base used to set their retail rates regardless of whether the item(s) to be constructed or operated is located inside or outside the electric utility's certificated service area or inside or outside Missouri; or

2. Transmission and distribution plant located outside the electric utility's service territory, but within Missouri;

(B) Construction means:

1. Construction of new asset(s); or

2. The improvement, retrofit, or rebuild of an asset that will result in a ten percent (10%) increase in rate base as established in the electric utility's most recent rate case;

(C) Construction does not include:

1. The construction of an energy generation unit that has a capacity of one (1) megawatt or less; or

2. The construction of utility-owned solar facilities as required under section 393.1665, RSMo;

3. Periodic, routine, or preventative maintenance; or

4. Replacement of equipment or devices with the same or substantially similar items due to failure or near term projected failure as long as the replacements are intended to restore the asset to an operational state at or near a recently rated capacity level.

(2) Certificate of convenience and necessity.

(A) An electric utility must obtain a certificate of convenience and necessity prior to—

1. Providing electric service to retail customers in a service area pursuant to section 393.170.2, RSMo;

2. Construction of an asset pursuant to section 393.170.1, RSMo; or

3. Operation of an asset pursuant to section 393.170.2, RSMo.

(B) The commission may, by its order, impose upon the issuance of a certificate of convenience and necessity such condition or conditions as it may deem reasonable and necessary.

(C) In determining whether to grant a certificate of convenience and necessity, the commission may, by its order, make a determination on the prudence of the decision to operate or construct an asset subject to the commission's subsequent review of costs and applicable timelines.

(D) An electric utility must exercise the authority granted within two (2) years from the grant thereof.

(3) In addition to the general requirements of 4 CSR 240-2.060(1), the following additional general requirements apply to all applications for a certificate of convenience and necessity, pursuant to sections 393.170.1 and .2, RSMo:

(A) The application shall include facts showing that granting the application is necessary or convenient for the public service;

(B) If an asset to be operated or constructed is outside Missouri, the application shall include plans for allocating costs, other than regional transmission organization/independent system operator cost sharing, to the applicable jurisdiction; and

(C) If any of the items required under this rule are unavailable at the time the application is filed, the unavailable items may be filed prior to the granting of authority by the commission, or the commission may grant the certificate subject to the condition that the unavailable items be filed before authority under the certificate is exercised.

(4) If the application is for authorization to provide electric service to retail customers in a service area for the electric utility under section 393.170.2, RSMo, the application shall also include:

(A) A list of those entities providing regulated or nonregulated retail electric service in all or any part of the service area proposed, including a map that identifies where each entity is providing retail electric service within the area proposed;

(B) If there are ten (10) or more residents or landowners, the name and address of no fewer than ten (10) persons residing in the proposed service area or of no fewer than ten (10) landowners, in the event there are no residences in the area, or, if there are fewer than ten (10) residents or landowners, the name and address of all residents and landowners;

(C) The legal description of the service area to be certificated;

(D) A plat of the proposed service area drawn to a scale of one-half inch (1/2") to the mile on maps comparable to county highway maps issued by the state's Department of Transportation or a plat drawn to a scale of two thousand feet (2,000') to the inch; and

(E) A feasibility study containing plans and specifications for the utility system, plans for financing, proposed rates and charges, and an estimate of the number of customers, revenues, and expenses during the first three (3) years of operations.

(5) If the application is for authorization to operate assets under section 393.170.2, RSMo, the application shall also include:

(A) A description of the asset(s) to be operated;

(B) The value of the asset(s) to be operated;

(C) The purchase price and plans for financing the operation; and

(D) Plans and specifications for the asset, including as-built drawings.

(6) If the application is for authorization to construct an asset under section 393.170.1, RSMo, the application shall also include:

(A) A description of the proposed route or site of construction;

(B) A list of all electric, gas, and telephone conduit, wires, cables,

and lines of regulated and nonregulated utilities, railroad tracks, and each underground facility, as defined in section 319.015, RSMo, which the proposed construction will cross;

(C) A description of the plans, specifications, and estimated costs for the complete scope of the construction project that also clearly identifies what will be the operational features of the asset once it is fully operational and used for service;

(D) The projected beginning of construction date and the anticipated fully operational and used for service date of the asset;

(E) A description of any common plant to be included in the construction project;

(F) Plans for financing the construction of the asset;

(G) A description of how the proposed asset relates to the electric utility's adopted preferred plan under 4 CSR 240-22;

(H) An overview of the electric utility's plan for this project regarding competitive bidding, although competitive bidding is not required, for the design, engineering, procurement, construction management, and construction of the asset;

(I) An overview of plans for operating and maintaining an asset;

(J) An overview of plans for restoration of safe and adequate service after significant, unplanned/forced outages of an asset; and

(K) An affidavit or other verified certification of compliance with the following notice requirements to landowners directly affected by electric transmission line routes or transmission substation locations proposed by the application. The proof of compliance shall include a list of all directly affected landowners to whom notice was sent.

1. Applicant shall provide notice of its application to the owners of land, or their designee, as stated in the records of the county assessor's office, on a date not more than sixty (60) days prior to the date the notice is sent, who would be directly affected by the requested certificate, including the preferred route or location, as applicable, and any known alternative route or location of the proposed facilities. For purposes of this notice, land is directly affected if a permanent easement or other permanent property interest would be obtained over all or any portion of the land or if the land contains a habitable structure that would be within three hundred (300) feet of the centerline of an electric transmission line.

2. Any letter sent by applicant as notice of the application shall be on its representative's letterhead or on the letterhead of the utility, and it shall clearly set forth—

A. The identity, address, and telephone number of the utility representative;

B. The identity of the utility attempting to acquire the certificate;

C. The general purpose of the proposed project;

D. The type of facility to be constructed; and

E. The contact information of the Public Service Commission and Office of the Public Counsel.

3. If twenty-five (25) or more persons in a county would be entitled to receive notice of the application, applicant shall hold at least one (1) public meeting in that county. The meeting shall be held in a building open to the public and sufficient in size to accommodate the number of persons in the county entitled to receive notice of the application. Additionally—

A. All persons entitled to notice of the application shall be afforded a reasonable amount of time to pose questions or to state their concerns;

B. To the extent reasonably practicable, the public meeting shall be held at a time that allows affected landowners an opportunity to attend; and

C. Notice of the public meeting shall be sent to any persons entitled to receive notice of the application.

4. If applicant, after filing proof of compliance, becomes aware of a person entitled to receive notice of the application to whom applicant did not send such notice, applicant shall, within twenty (20) days, provide notice to that person by certified mail, return receipt requested, containing all the required information. Applicant shall also file a supplemental proof of compliance regarding the additional notice.

(7) Provisions of this rule do not create any new requirements for or affect assets, improvements, rebuilds, or retrofits already in rate base as of the effective date of this rule. Provisions of this rule may be waived by the commission for good cause shown.

REVISED PRIVATE COST: The cost to the department may range from zero to one hundred thousand dollars (\$0-\$100,000) versus the less than five hundred dollars (\$500), which was submitted in the original estimate.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Economic Development
Division Title: 240-Public Service Commission
Chapter Title: Chapter 20 – Electric Utilities**

Rule Number and Title:	4 CSR 240-20.045 Electric Utility Applications for Certificates of Convenience and Necessity
Type of Rulemaking:	Final Order of Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Investor Owned Electric Utilities	\$0-\$100,000

III. WORKSHEET

Two affiliated investor-owned electric utilities (IOUs) indicated the requirement to obtain a CCN for an asset located outside Missouri would cause them to incur significant litigation expense. The fiscal impact of this provision is estimated between \$0 and \$100,000. See Section IV for assumptions.

They also indicated the requirement to get a CCN for “the improvement, retrofit or rebuild” of an asset will cause them to incur significant litigation expense. This requirement was modified by adding a limitation that a CCN only needs to be obtained when the improvement, retrofit or rebuild will result in a 10 percent increase in rate base as established in the electric utility’s most recent rate case. With this limitation, only one project over the past several years would have required a CCN. Therefore, with the limitation, the fiscal impact of this provision is deemed minimal.

IV. ASSUMPTIONS

The estimated life of the rule is 3 years.

Based on the number of instances over the past 3 years when a CCN would have been required had the provisions of this final order of rulemaking been effective at the time of the transaction, it is assumed that one new CCN, not already required by Commission rule provisions, will be required during the estimated life of the rule. Since the extent and the nature of litigation associated with that case is unknown until it is contested, it was assumed that the CCN case would result in an additional cost of \$0 to \$100,000 as a result of the final order of rulemaking.