

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

In the Matter of a Proposed Amendment to	)	
Commission Rule 4 CSR 240-3.105, Filing	)	File No. EX-2015-0225
Requirements for Electric Utility Applications for	)	
Certificates of Convenience and Necessity	)	

**THE OFFICE OF THE PUBLIC COUNSEL’S COMMENTS**

COMES NOW the Office of the Public Counsel (“OPC”) and for its Comments states:

1. A rulemaking hearing regarding the Missouri Public Service Commission’s (“Commission”) proposed amendment of Commission Rule 4 CSR 240-3.105 is scheduled for May 12, 2016, at 10:00 a.m. Comments on the Commission’s proposed rule changes regarding the filing requirements for electric utility certificates of convenience and necessity (“CCN”) are due on or before April 29, 2016.

2. For its comments, OPC asks the Commission to promulgate rules requiring CCN applicants to submit proof of actual notice to affected landowners. Specifically, OPC suggests applicants be required to include an affidavit or some other form of verified certification of compliance with certain minimum notice requirements.

3. During a recent CCN application, one party raised concern that not all affected landowners had received notice of the company’s application. In response, that applicant made a filing indicating the steps it had taken to provide notice but concluded “[e]ven if a particular landowner did not receive notice, there is no requirement in any statute, rule or based on any other source of law or policy, that requires that every landowner who might be impacted by a utility improvement that is the subject of a CCN application receive actual notice that the improvement might impact their land.” (*ATXI’s Response to the Neighbors’ Motion to Compel*, Case No. EA-2015-0146, Doc. No. 120, pp. 11-12)(internal footnote omitted). The applicant

further asserted “[t]he fact is that there is absolutely no requirement for a utility to notify anyone before it seeks a CCN at this Commission.” *Id.* at 12. Apparently concerned by such a bold statement, the Commission directed its staff to respond and said response verified “for purposes of a certificate of convenience and necessity, there is no statutory requirement that potentially affected landowners receive actual notice that a utility plans to seek a certificate of convenience and necessity to build an electric line such as the 345 kV and 161 kV lines that are part of the Mark Twain transmission line project.” (*Staff’s Response*, Case No. EA-2015-0146, Doc. No. 126). Ruling on the matter, the Commission stated “[i]ndeed, the only legal authority cited is by ATXI and Staff, and that authority states that no such notice is required.” (*Order Regarding Motion to Compel*, Case No. EA-2015-0146, Doc. No. 131).

4. During local public hearings related to CCN applications, the Commission will normally announce to the public it does not decide eminent domain issues. For example, at a local public hearing in Shelbyville, the presiding regulatory law judge stated: “[t]he Commission may grant permission if it finds this line is necessary or convenient for the public service. The Commission cannot decide any questions about eminent domain. Those questions can only be addressed in Circuit Court.” (Case No. EA-2015-0146, Tr. Vol. 2, p. 7). Such an admonishment is true but the fact eminent domain is raised so regularly by members of the public at these hearings causes the Commission to make the foregoing statement should not be overlooked. Many members of the public are not persuaded by the Commission’s admonition; perhaps they recognize the Commission’s decision on CCN applications – though not an eminent domain issue per se – can be an integral step in future Chapter 523 condemnation proceedings. *See Mo. Rev. Stat. §523.001 et seq.*

5. Whether or not the Commission, by making a determination on the necessity or convenience of a project, plays a role in future condemnation proceedings is irrelevant. The Commission's decision in CCN cases will more than likely determine the route and location of the project. The land and property of anyone on, or along, the approved route is impacted. Those landowners should be notified when an application is filed with the Commission. Further, the burden of providing notice to landowners, if any burden exists, lies properly with the applicant.

6. OPC offers these comments as a way to require notice to landowners by making proof of notice a part of the minimum filing requirements. Importantly, this additional requirement will ameliorate concerns landowners are not given notice of a project and, as a benefit to the applicant, provide guidance on the scope of minimum notice it should provide.

7. OPC suggests the Commission adopt the following addition to the proposed rule published in the Missouri Register, to be included as paragraph 7 of 4 CSR 240-3.105(1)(B):

**7. An affidavit or other verified certification of compliance with the following notice requirements to landowners affected by all proposed routes or locations. The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred.**

**A. Applicant shall provide notice by certified mail of its application to the owners of land, as stated on the previous year county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 500 feet of the centerline of a transmission project.**

**B. Any letter sent by the applicant shall be on that representative's letterhead or on the letterhead of the utility, and it shall clearly set forth:**

**(I). The identity, address and telephone number of the utility representative;**

**(II). The identity of the utility attempting to acquire the certificate;**

**(III). The general purpose of the proposed project;**

**(IV). The type of facility to be constructed;**

**(V). The contact information of the Public Service Commission and Office of the Public Counsel.**

**C. If 25 or more persons would be entitled to receive direct mail notice of the application, applicant shall hold at least one public meeting in each county containing affected land. The public meeting shall be held in a public building with reasonable accommodations matching the number of affected landowners. The time for the meeting shall be calculated to give all affected land owners sufficient time to address their concerns and the shall be held at a time of day to reasonably allow affected landowners participation in said meeting. Direct mail notice of the public meeting shall be included in the notice sent by certified mail to each of the owners of land, as stated on the previous year county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility.**

**D. Upon the filing of proof of notice as described in paragraph 7 of this section, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the applicant finds that an owner of directly affected land has not received notice, it shall immediately advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraph B of this paragraph. The applicant shall immediately file a supplemental affidavit of notice with the commission.**

**E. Failure to provide notice in accordance with this paragraph shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.**

8. Participation in Commission cases by affected members of the public is a desirable outcome and should be encouraged at a matter of good public policy. Requiring notice to affected landowners facilitates informative and collegial dialogue between those directly impacted by a project and the applicant. Such a dialogue results in greater public acceptance of a project or, at a minimum, will allow the Commission to consider the views of those directly impacted by the project in its deliberations.

9. Importantly, these minimum notice requirements are not an undue burden on the applicant. Many CCN applicants make an effort to provide some form of notice to affected landowners but there exists no uniform or required method to guide the applicant. Moreover,

landowners and members of the public should not be required to rely simply on the good-will of the applicant. Adopting OPC's proposed additions to the rule will resolve these issues.

10. OPC also proposes to add the words "and alternative" to (1)(B)1. of the rule published in the Missouri Register. This addition would then necessitate that "(s)" be added after the word "route." Including these modifications, (1)(B)1. would say:

1. A description of the **proposed and alternative** route (s) **or site** of construction and a list of all electric, **gas**, and telephone **utility, conduit, wires, cables, and** lines of regulated and nonregulated utilities, railroad tracks *[or any]*, **and each** underground facility, as defined in section 319.015 RSMo, which the proposed construction will cross **or come within two hundred fifty (250')** of;

WHEREFORE, the Office of Public Counsel respectfully submits its Comments and requests the Commission incorporate the additional language contained above.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 29<sup>th</sup> day of April 2016:

/s/ Tim Opitz