

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of May, 1993.

Coin Acceptors, Inc., and Hunter Avenue Property, L.P.,)	
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)	
Complainants,)	
)	
v.)	<u>Case No. EC-93-248</u>
)	
Union Electric Company,)	
)	
)	
Respondent.)	
)	

ORDER DISMISSING COMPLAINT

On February 18, 1993 Coin Acceptors, Inc. and Hunter Avenue Property, L.P. (Complainants) filed a Complaint against Union Electric Company (UE) alleging that UE plans to construct a 138 kv overhead transmission line between its Marshall substation in Kirkwood and its Hunter substation in Ladue. Complainants state that according to UE's current plans, the line will in part follow an approximately fifty feet wide railroad right of way, including above and across a twenty feet wide portion of the adjoining parking lot on the east side of the property at 300 Hunter Avenue. The parking lot holds approximately 180 cars for occupants and visitors and about one-half of the spaces are located in the aforesaid twenty feet wide portion. UE plans to acquire the aforesaid portion of the parking lot through eminent domain. Complainants state that UE could construct the portion of this transmission line which will run in the area of the property at 300 Hunter Avenue on the east side of the railroad right of way. Complainants state that construction of the transmission line on the west side of the railroad right of way and above and across the parking lot at 300 Hunter Avenue will unnecessarily expose occupants of and visitors to the building at 300 Hunter Avenue to the dangers to health and safety naturally posed by a high

power transmission line, reduce parking space, and unnecessarily render the building a nonconforming area under the Zoning Code of the City of Clayton, Missouri. Complainants request the Commission to order UE to route the line on the east side of the railroad at least in the portion adjacent to the property at 300 Hunter Avenue.

On March 1, 1993 UE filed an Answer to the Complaint admitting its plans to construct a 138 kv overhead transmission line between its Marshall and Hunter substations as outlined in the Complaint. UE denies the specific portions of the Complaint that allege harm to Complainants other than that it will require an easement from Complainants to construct the line, and specifically denies that the permanent rights required in such easement are inconsistent with Complainant's current "parking lot" use. UE states that it is unwilling to move the location of the proposed line as suggested by Complainants and requests that the Complaint be dismissed.

On March 4, 1993 the Commission's Staff (Staff) filed a Motion To Dismiss. Staff states that the Complaint pursuant to Section 386.390, R.S.Mo. 1986, fails to comply with the statute or rule governing complaints, 4 CSR 240-2.070(2), in that the Complaint fails to allege any violation of law or rule or order or decision of the Commission. Staff further states that without such a violation alleged, there are no grounds for a complaint. Staff cites *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 183 (Mo. App. 1960), for the rule that UE would not be required to obtain an additional line certificate from the Commission in order to construct additional lines in the service territory where it already has authority to operate. On March 11, 1993, Complainants filed a Response to Staff's Motion To Dismiss.

On March 19, 1993, the Commission issued an Order Requiring Response (of UE) within 30 days. Specifically, the order required UE to file a response to the Complaint to provide the Commission with sufficient information in the

form of written verification that alternate electric transmission routes were considered and why the proposed route complained of by Coin Acceptors, Inc. and Hunter Avenue Property L.P. was chosen over all others. On April 15, 1993, UE filed its Verified Response As Required By Order Of The Commission. On April 30, 1993 Complainants filed a Reply to UE's Response To Order. On May 4, 1993, UE filed a Response to Complainants' Reply Brief and finally, on May 11, 1993, Complainants filed a Reply to UE's Response.

The Commission, after considering all the numerous pleadings, and especially after considering the requested Response of UE to its own order, determines that the Complaint should be dismissed. To reiterate what the Commission has previously decided in its earlier Order Requiring Response:

Complainants have suggested that an alternate route for the proposed transmission line would: "significantly reduce, if not eliminate, the danger to the occupants of and visitors to the building at 300 Hunter Avenue, without exposing anyone else to any increased danger and without requiring any significant increase in cost for Union Electric Company." Complainants also say: "Further, such a construction route would leave the parking at 300 Hunter Avenue intact." When such an allegation of "abuse of discretion" by an electric utility in constructing a transmission line is pleaded in a properly filed complaint with the Commission, it is incumbent on the electric utility complained of to answer those allegations before the case can proceed.

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When a Complaint of this nature is filed, in order for the Commission to meet its statutory duty to determine that an electric utility has not abused its discretion in deciding that a proposed transmission line is necessary and convenient for the public service and is designed to be the most direct and least intrusive route, the electric utility must file a response that pleads sufficient factual information so that the Commission may make that determination.

The issue, then, is essentially, has UE "abused its discretion" in choosing the present location to construct the transmission line in question in this case. UE has stated its operating procedure in transmission line alignment in general:

For any transmission line project, the specific alignment and location of structures takes place following selection of the overall route. Specific pole locations are determined using an optimization process to minimize project costs. In this process, the design engineer uses computer software to locate and select structure types that result in a lowest cost design while ensuring that all safety parameters are met. The Marshall-Hunter pole types and locations were determined using this process.

UE proceeds to specifically state additional reasons why the Marshall-Hunter project was placed on the western side of the right of way:

- (1) First, this alignment permits the I-170 right of way to be used for "blow-out" and overhang and, as such, avoids the need for 4 to 6 private "blow-out" and overhang easements (depending on precise structure placement) that would be needed on the eastern side of the right of way. This significantly reduces the impact on property owners along the eastern side of the right of way and thereby reduces the overall cost of the project.
- (2) In addition, this routing avoids interference with an existing double-circuit 34.5 kV distribution line on the east side of the right of way.
- (3) The final justification for placing the Marshall-Hunter project on the western side involves the potential future use of the right of way. This right of way is now owned by Citizens for Modern Transit ("CMT") and was acquired for potential development as a north-south route for the Light-Rail System. On the western edge, the Marshall-Hunter project abuts the existing I-170 corridor and thereby maximizes the remaining right of way that can be reserved for light-rail use. If the Company moved the Marshall-Hunter project eastward, it would effectively push CMT eastward. In all likelihood, this would require CMT to take additional private property beyond the existing right of way.

UE further goes on to discuss the Complainants' particular easement. It states that the easement will not result in any permanent loss of parking spaces on the Coin Acceptors' property and that Complainants will receive "fair market value" for any easement rights acquired. UE states that its options are limited in that the Terminal Railroad right of way, which at places exceeds 100 feet in width, narrows to approximately 40 feet along the Complainants' property. UE says it considered alternatives after Complainants expressed their concern. UE says to

move the project eastward just enough to eliminate the need for Complainants' easement would require UE to acquire a 30-foot wide by 1,360 foot long overhang easement from the City of Clayton. UE also states that any relocation eastward moves the Marshall-Hunter project and an existing double circuit 34.5 kv line closer to both Shaw Park and Clayton High School. UE projects that the structural modifications for such a relocation alone would add in excess of \$85,000 to the project cost. UE says to move the Marshall-Hunter project within the City of Clayton completely to the eastern side of the right of way would accentuate the above stated objections in addition to an additional objection. UE states that the ultimate destination of the Marshall-Hunter project is the Hunter substation, which is a mere 300 feet north of the Complainants' property and is located on the west right of way. UE states that as a practical matter this means that once the project crosses the right of way to avoid Complainants' property, it will almost immediately be required to cross back over the right of way to reach the Hunter substation. UE says this type of right of way "crisscrossing" does not amount to sound engineering practice.

Complainants' main objection is that locating the line on the east side of the right of way will unnecessarily "take" their parking spaces which will have a detrimental impact on the value of their building located on the property. UE in its Response to Complainants says that the easement will not result in the loss of any parking spaces to Complainants. UE even indicated that it was willing to work with Complainants to schedule the work on "off peak" hours to mitigate any intrusion from construction, which should last two weeks.

UE has formed a "Transmission Line Siting Committee" (Committee) which is used to comply with the Commission's suggested requirement of written verification of alternative line routes in transmission siting as set out in *App. of Union Electric, EA-91-56*, wherein the Commission granted UE authority to construct 700 feet of a 161 kv line through the City of Linn Creek in Camden

County, Missouri. UE says by October 1991 when the Committee was formed, real estate acquisitions for the Marshall-Hunter project, except for "blow-out" and overhang easements, were virtually complete. The Committee considered the route chosen "after-the-fact" but in light of the "routing factors" that had been established as pertinent including: line length, number and type of structures required, total project cost, proximity to buildings and improvements, number of property crossings, number of affected property owners, and the extent of use of existing utility corridors. The Committee found the chosen transmission route to be the best route considering all these factors.

The Commission commends UE for adopting this process for transmission route sitings. It would have been highly persuasive to have had the process in place prior to the route selection in the present case. Again, the Commission's sole determination is to consider whether UE abused its discretion in the actual transmission site selection process that was used. The Commission finds, in light of the verified information supplied by UE, that UE did not abuse its discretion in the initial transmission siting in that a design engineer did use a computer program to locate and select structure types for the transmission line. Also, the Commission finds that UE in fact has considered alternatives for the transmission line to eliminate the Complainants' alleged objection. The Commission finds that UE's conclusions that alternate routes would be inappropriate was a reasoned decision based on the known facts and that the conclusion to not relocate the transmission route was not arbitrary, unreasonable or capricious. The Commission's specific and necessary finding is that UE did not "abuse its discretion" in the transmission route siting process for the easement that is the subject of the complaint herein. The Commission also is of the opinion that this complaint is more appropriately the subject matter of a condemnation action if UE and Complainants cannot arrive at a fair market value for any "taking" by UE of Complainants' property.

IT IS THEREFORE ORDERED:

1. That the Complaint of Coin Acceptors, Inc. and Hunter Avenue Property L.P. be hereby dismissed.

2. That this order shall become effective on the 2nd day of June, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Kincheloe
and Crumpton, CC., concur.
Perkins, C., absent.

