

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

In the Matter of the Application of Ameren Transmission )  
Company of Illinois for Other Relief or, in the Alternative, )  
a Certificate of Public Convenience and Necessity )  
Authorizing it to Construct, Install, Own, Operate, ) File No. EA-2015-0146  
Maintain and Otherwise Control and Manage a )  
345,000-volt Electric Transmission Line from Palmyra, )  
Missouri, to the Iowa Border and Associated Substation )  
Near Kirksville, Missouri.<sup>1</sup> )

**MOTION TO COMPEL DISCOVERY**

COMES NOW Ameren Transmission Company of Illinois (“ATXI”), by and through counsel, and for its Motion to Compel Discovery states as follows:

1. By this motion, ATXI requests an order of the Commission compelling intervenor Neighbors United Against Ameren’s Power Line (“Neighbors United”) to fully respond to a series of data requests to which Neighbors United has objected. The data requests directed at Neighbors United ask for information regarding the identity and nature of the interests of its members, communications its members have had with members of the public, county commissions and with ATXI regarding the Mark Twain Project (the “Project”) which is the subject of this case, and information regarding the nature of the claims raised by its members related to the Project. ATXI argues that the discovery sought is relevant to this proceeding and otherwise reasonably calculated to lead to the discovery of admissible evidence,<sup>2</sup> and that Neighbors United cannot avoid this discovery by hiding behind its recently-established status as an organized entity, all the while asserting in this action that the interests of its individual members justify its intervention and its opposition to the Project.

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<sup>1</sup> The project for which the CCN is sought in this case also includes a 161,000-volt line connecting to the associated substation to allow interconnection with the existing transmission system in the area.

<sup>2</sup> Mo. R. Civ. P. 56.01(b)(1), made applicable to Commission proceedings by 4 CSR 240-2.090(1).

2. On August 24, 2015, ATXI served Neighbors United with its First Set of Data Requests to Neighbors United and served a corrected set of these data requests on August 26, 2015 (copy attached as **Exhibit A**). In response, Neighbors United objected to all but 3 of the 14 data requests and agreed to provide limited responses to some of the requests in a letter dated September 3, 2015 (copy attached as **Exhibit B**). In a letter dated September 15, 2015, counsel for ATXI responded to the objections posed by Neighbors United (copy attached as **Exhibit C**).

3. Undersigned counsel has complied with 4 CSR 240-2.090(8). Counsel for ATXI conferred in good faith by telephone with counsel for Neighbors United regarding the discovery dispute on September 21, 2015. Because the discovery dispute remained unresolved, counsel for ATXI and counsel for Neighbors United engaged in a telephone conference with Administrative Law Judge Ron Pridgin on September 23, 2015. Because Neighbors United has refused to withdraw any of its objections to ATXI's requested discovery, the dispute remains unresolved.

4. In response to **Data Request No. 2** (which sought the name and address of Neighbors United members, whether they had an electrical service provider and, if so, the name of that electrical service provider), Neighbors United objected to (1) providing names for all members of Neighbors United, (2) addresses for members of Neighbors United if the address is other than the address of the property subject to the proposed line, and (3) providing the specific electric service provider for each member or, if they do not have electric service, identifying that fact. In its actual response, Neighbors United did not provide even what it promised, failing to provide the mailing address for members in Marion and Shelby counties.<sup>3</sup>

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<sup>3</sup> Neighbors United also failed to provide any names and addresses for members in Knox County who own property subject to the line, but promise to do so at some point in the future. The 20-day response period expired no later than September 15, and although Neighbors United indicated the need for additional time to respond (to September 22), that date also passed 10 days ago.

5. Neighbors United bases its refusal on its assertion that such information is readily available to ATXI, is information not known to Neighbors United, is burdensome and harassing, and would impose unnecessary or unjust burdens or expense. While it is obvious that Neighbors United membership information is not known to ATXI, it is information Neighbors United has the ability to provide. While it is true that a party is required to furnish information “as is available to the party” (Mo. R. Civ. P. 57.01(c)), an organization that is a party cannot avoid answering if it can obtain the information from sources under its control. *State ex rel. Mid-American Pipeline Co. v. Rooney*, 399 S.W.2d 225, 228-229 (Mo. App. W.D. 1965).<sup>4</sup> In point of fact, to gather the information that Neighbors United did provide in response to the data requests, it distributed the data requests to its members at one of its regular meetings, and the minutes for that meeting state: “The group will work with our attorney, Jennifer Hernandez, to provide the necessary information to ATXI.” Meeting Minutes (September 14, 2015) (attached as **Exhibit D**). There is no reason that Neighbors United cannot obtain all of the requested information to provide a full response to Data Request No. 2. Such a request is not unduly burdensome and is obtainable in the same fashion as the information it has already provided.<sup>5</sup>

6. The information sought by Data Request No. 2 is not sought for purposes of harassment; rather, it is relevant information necessary to ATXI’s defense in this CCN action. Notably, Neighbors United does not claim that the information is not relevant or is not otherwise reasonably calculated to lead to the discovery of admissible evidence. One of the factors the Commission will consider in ATXI’s request is whether the requested service promotes the

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<sup>4</sup> As discussed further below, those with the true interest in this case are not this newly-formed organization, formalized just one day before intervention was sought.

<sup>5</sup> ATXI withdrew Data Request No. 7 (requesting identification of Neighbors United members who had attended meetings held by ATXI) as long as it received a list of Neighbors United members. A complete response to Data Request No. 2 would provide ATXI with the necessary information.

“public interest.” *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994). Neighbors United moved to intervene in this action on the grounds that its *members* (“a majority” of whom “live or own property near the presently proposed route”) opposed ATXI’s application based upon the “negative impacts of the proposed project.”<sup>6</sup> Neighbors United’s intervention application further asserted that they should be allowed to intervene because its members may be subject to eminent domain and that members, even if not landowners whose land would be directly affected by the project, would be impacted to “varying degrees,” and that the intervention of the landowners is needed to protect their “vital interest.” The Commission is entitled to know the exact nature of the impacts of the Mark Twain Project on Neighbors United members. In order to understand these impacts, information as to who the members are, where they live (in the immediate vicinity of the line, or elsewhere), whether they receive electrical service from a utility that would benefit from the Project,<sup>7</sup> and, finally, whether they are served by an electric utility at all is relevant information. Each of these considerations bears on the issue of the public interest, and ATXI is entitled not only to the discovery of relevant information, but more broadly to the discovery of information that may otherwise lead to the discovery of admissible evidence. For example, there could be members that live near other power lines today and if that is so, the impact (or lack of impact) of those other lines is relevant to the reasons behind those members’ opposition to the Project. Accordingly, the information sought is squarely within the scope of discovery and there is no reason that Neighbors United should not be required to provide the information requested.

7. Neighbors United refused to provide the mailing addresses and parcel numbers of those members who own property subject to the proposed transmission line in response to **Data**

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<sup>6</sup> *Motion to Intervene on Behalf of Neighbors United Against Ameren’s Power Line* at ¶¶ 2, 3, 4.

<sup>7</sup> Based on information and belief, some of the members live in an “off-the-grid” community and thus take no electric service, which is relevant to the nature and extent of their interests and how the Project impacts them.

**Request No. 4** for the same reasons. They have no more merit here. The information regarding tax parcel numbers is not equally available to ATXI “after receipt of the members’ addressees for property subject to the proposed line”—especially where Neighbors United has refused to provide members addresses for the subject property. The tax assessments/tax bills that Neighbors United members (indeed, everyone in Missouri) receive every single year include parcel number information; as such, this information is far more readily available to property owners, but (even if ATXI possessed all of the relevant information about the addresses for the subject properties, which it does not have) would require ATXI to conduct research perhaps in five different rural counties (most or all of which do not provide this information online) on each parcel. Furthermore, this information is at least as readily available to Neighbors United as the Township/Range/Section information it provided for some of the properties in the limited response it provided.

8. Moreover, the relevance of the requested information is obvious. Identification of the ownership of property within the proposed route of the members of a citizens-group intervener is relevant information that the Commission should have as it evaluates whether the Project is in the public interest. Moreover, information (such as whether the property owner resides at the affected parcel) regarding the *degree* to which members who own property will be affected by the transmission line is also relevant. If, indeed, the members of Neighbors United have “interests which are different from that of the general public” because they are landowners, ATXI is entitled to information reasonably calculated to lead to the discovery of admissible evidence on that point. Neighbors United should be compelled to provide a full response to Data Request No. 4.

9. Neighbors United refused to respond to **Data Request No. 5**, which sought information regarding the presence of other electric lines on the affected parcels owned by Neighbors United members and, with regard to those lines, the line owner or easement holder and, if known, the restrictions these lines place on the ability to conduct farming operations or ranching activities. The information sought is relevant to the concerns already voiced by Neighbors United regarding the effect of the proposed transmission line on its members' constitutional right to farm.<sup>8</sup> Consequently, whether existing transmission lines are present and interfere with current farming operations is relevant. As such, this request is not designed to harass or unduly burden Neighbors United; rather, ATXI seeks to obtain information directly bearing on the weight of Neighbors United claims, and this inquiry is appropriate. *See In re Missouri-American Water Co.'s Tariff to Revise Water and Sewer Rate Schedules*, 2003 Mo. PSC LEXIS 1552 at \*6 (December 2, 2003) (“‘Relevant’ evidence is that which tends to prove or disprove a fact of consequence to the pending matter.”).

10. Neighbors United objects to providing this information, in part, by asserting the attorney-client privilege and work product doctrine—neither of which are applicable here. Factual matters within a party's knowledge are not protected from discovery just because the information is developed as a result of a party's investigation. *State ex rel. Hof v. Cloyd*, 394 S.W.2d 408 (Mo. *en banc* 1965). Nor does the mere fact that otherwise relevant information may have been discussed with counsel make that information privileged. *In re Union Elec. Co., d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, 2011 Mo. PSC LEXIS 429 at \*9-10 (April 19, 2011). And, as is the case with other requests seeking information in possession of Neighbors United members, Neighbors United has the obligation to

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<sup>8</sup> In their *Alternative Proposed Procedural Schedule*, Neighbors United indicates that they intend to argue that the Project may be precluded by Missouri's "right to farm" constitutional amendment.

fully respond to Data Request No. 5 or produce documents containing that information if it so chooses. If members have other lines on their properties, Neighbors United's lawyer didn't build the line, and there is no attorney-client privilege or work product protection unless Neighbor United's attorney advised the members (or their predecessors) about easements that would have granted before this case started. That obviously isn't the case.

11. As it did with in other responses, Neighbors United restricted its response to **Data Request No. 8** (seeking copies of all documents about the Mark Twain Project that were distributed or made available by Neighbors United and its members or agents to the public) to only those distributed after its date of incorporation—one day before it moved to intervene in this CCN action. Neighbors United has no interest apart from its members and, therefore, it is not entitled to hide behind a filing made by one of its most active members (since its actual inception at least a year ago) to shield relevant and otherwise discoverable information. In point of fact:

a. Those constituting the entity's members have been acting as an organized group since at least the inception of its Facebook page ("Neighbors United Against Ameren") on September 8, 2014, and its own website (<http://www.neighborsunitednemo.com>), which was registered on January 1, 2015.

b. Teri Page, the incorporator and former board member of Neighbors United has been very active in the group for much, if not all, of the group's existence—in fact, she provided answers on behalf of Neighbors United in a news article about the group, published in The Edina Sentinel on November 12, 2014.

c. Moreover, the groups' website, developed and deployed prior to any incorporation, has *continued* to post information about the Project after the incorporation. Ms. Page, a member of this group's Facebook page, has continued to post on that

Facebook page in opposition to the Project as have others who, given the substance of their posts, are clearly “members.”

Consequently, the fact that this group chose to form an entity one day before it intervened on the basis of the interests of individual members has no relevance to the fact that it has been carrying on its activities since the fall of 2014 and continues to do so independent of that entity.

Neighbors United should be compelled to provide a response to Data Request No. 8 absent any fictitious date restriction.

12. Despite the objection otherwise, production of the documents about the Project distributed to the public by Neighbors United and identification of their recipients is relevant information that is not “equally accessible” to ATXI. Nor does this request seek to unduly burden or harass Neighbors United; rather, it is instead intended to identify the concerns and interests (and the extent of those interests as compared to the interests of others in the area and the public as a whole) of Neighbors United related to its opposition to the Project—all of which relate to whether the Project is in the public interest. A full and complete response to Data Request No. 8 is warranted. As it did in its September 14<sup>th</sup> meeting, Neighbors United should again ask its members for copies of any information they made public since September 2014.

13. **Data Request No. 9** requested a copy of a PowerPoint presentation entitled, “Ways to Make the Project More Expensive for ATXI,” made on December 3, 2014, at a public meeting and posted on the public Facebook page for Neighbors United. This presentation is relevant to identify the true nature of Neighbors United interest in opposing the Project and, as it reveals the group’s plan to make the Project more expensive for ATXI, bears on an issue of interest to the Commission—whether the Project is economically feasible. In objecting to this data request, Neighbors United argues that the document is protected by the work product



privilege—yet, paradoxically, is somehow also information not known to Neighbors United. Neither objection prevents its disclosure.

14. From the slide shown in the photograph, it is clear that the PowerPoint presentation related to the group’s overall efforts in opposing the Project and was not focused on any upcoming litigation. Accordingly, production of this document is not protected by the work product doctrine. Even if it had been so protected at one time, the fact that the presentation was made in a public meeting and then posted on a public Facebook page destroyed any work product protection it might have once had. Courts have routinely held that social media information is not privileged and does not enjoy any privacy right precluding discovery of this type of information as long as it is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., EEOC v. Original Honeybaked Ham Co.*, 2012 U.S. Dist. LEXIS 160285 at \*5-6 (D. Colo. Nov. 7, 2012) (“There is a strong argument that storing such information on Facebook and making it accessible to others presents an even stronger case for production, at least as it concerns any privacy objection. It was [the plaintiffs] who, by their own volition, created relevant communications and shared them with others.”). Finally, this document is quite presumably within the control of Neighbors United to produce—pictured in the photograph posted on Facebook are the incorporator for the group, Teri Page, and the current president of the group, Gena Briggs. Neighbors United should be compelled to provide the requested document in response to Data Request No. 9.

15. In response to **Data Request No. 10** (requesting communications between members of Neighbors United and the various county commissioners regarding the Mark Twain Project), Neighbors United objected to providing any information regarding communications made before its date of incorporation. As explained above, this fictitious date restriction is

irrelevant to the on-going activities of the group and its members, and Neighbors United should not be able to withhold this information by using its incorporation as a shield. Public information also shows that Neighbors United was deeply involved in encouraging county commissions to pass resolutions and send them to the Commission in an obvious attempt to influence the decision in this case. Moreover, the response provided by Neighbors United is incomplete by its own disclosures elsewhere—the response to Data Request No. 10 references public meetings held by the Adair and Knox County Commissions, but does not include information regarding the contact that its members had with commissioners which were recorded in minutes of their meetings on July 20<sup>th</sup> and September 21<sup>st</sup>. Even the promised limited response was only a half-hearted attempt to comply with the requested discovery.

16. The objection that such information is irrelevant is equally unfounded. Communication that members of Neighbors United have had with members of the county commissions for each of the five counties along the route of the Project is relevant or is otherwise likely to lead to the discovery of admissible information. One of the conditions of a CCN issued by the Commission could relate to county assents from each of the county commissions, and information provided by Neighbors United related to the project to those commissions is relevant to ATXI's efforts to obtain those assents. The Commission should compel Neighbors United to provide a complete response to Data Request No. 10.

17. Neighbors United offered a general position statement as its response to **Data Request No. 11** as opposed to identifying its members who support the use of renewable energy on the ground that its response should be again limited to the date of its incorporation and to the entity and not its individual members. That the entity has no interests separate and apart from its

members<sup>9</sup> and that the response should not be limited by the date of incorporation are points that ATXI has already made above. The information sought is relevant: whether the Project is in the public interest—indeed, in the interest of any of the members of Neighbors United—has to do, in part, with the Project’s ability to supply renewable energy. Moreover, such information is relevant information necessary for ATXI to use in its defense—especially with regard to any member of Neighbors United who provides testimony in this proceeding. Neighbors United should provide a response.

18. **Data Request No. 12**, which requested information regarding communications between members of Neighbors United and any employees or agents of ATXI, is a type of request commonly found in many pattern interrogatories in civil courts in that a party is entitled to discover from other parties statements of which the other parties are aware that may be used as admissions against interest. In fact, various persons have posted comments on the Facebook page set up by Neighbors United at various times attributing statements to ATXI representatives; it is quite probable that many—if not all—of those posting comments are members of Neighbors United. Despite this, Neighbors United again limits its response to communications made after its date of incorporation; however, the date of Neighbors United incorporation has no bearing on whether any statements made by ATXI before that date would constitute admissions. There is simply no justification for the date restriction of Neighbors United incorporation; to hold otherwise would require no answer—ATXI has had no communications with the legal entity Neighbors United. A complete response to Data Request No. 12 is the only proper response.

19. Neighbors United response to **Data Request No. 13** (seeking the identification of any members who have asserted a claim or complaint about the health effects upon humans or

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<sup>9</sup> According to the September 14, 2015 minutes, members Deborah and Jennifer provided this answer.

livestock of transmission lines on or near their property) demonstrates why the group should be compelled to provide the information sought by the data request. Relying on the same objections it previously lodged (irrelevant, unduly burdensome and harassing, information not in its possession or control), Neighbors United responds with a panoply of asserted health concerns—childhood leukemia, increased risk of miscarriage, draining batteries in pacemakers, stress on livestock, stray voltage, etc. These concerns are consistent with the concerns posted on the group’s Facebook page. There can be no question that the information sought by ATXI—whether any member has actually experienced these harms from transmission lines already on their property—is discoverable information relevant to ATXI’s ability to defend itself in this litigation. Neighbors United should provide this information and can do so, much in the same way that it has gathered other information from its membership. That the information may not be helpful to Neighbors United is no reason to prevent them from providing the relevant information requested by Data Request No. 13.

WHEREFORE, ATXI respectfully requests that the Commission compel Neighbors United to provide full and complete responses to Data Request Nos. 2, 4, 5, 8, 9, 10, 11, 12, and 13.

Respectfully submitted,

/s/ James B. Lowery \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the public version of the foregoing Motion to Compel Discovery has been e-mailed, this 2<sup>nd</sup> day of October, 2015, to counsel for all parties of record.

*/s/ James B. Lowery* \_\_\_\_\_

**An Attorney for Ameren Transmission  
Company of Illinois**

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

In the Matter of the Application of Ameren Transmission )  
Company of Illinois for Other Relief or, in the Alternative, )  
a Certificate of Public Convenience and Necessity )  
Authorizing it to Construct, Install, Own, Operate, ) File No. EA-2015-0146  
Maintain and Otherwise Control and Manage a )  
345,000-volt Electric Transmission Line from Palmyra, )  
Missouri, to the Iowa Border and Associated Substation )  
Near Kirksville, Missouri. )

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’  
FIRST SET OF DATA REQUESTS TO  
NEIGHBORS UNTIED AGAINST AMEREN’S POWER LINE**

1. Please provide copies of the Articles of Incorporation of a Nonprofit Corporation and Domestic Nonprofit, the minutes of the organizational meeting required by section 355.111, RSMo., and a list of the directors of the corporation, as contemplated by section 355.111(2), RSMo., of Neighbors United Against Ameren’s Power Line (“Neighbors United”).
2. Please identify by name and address each member of Neighbors United and for each such member, state from whom they receive electrical service (or, if they do not receive electrical service, please so state).
3. Please identify the total number of members of Neighbors United.
4. Please identify, by name and address, each member of Neighbors United that claims an ownership or other legal or equitable interest in some portion of the real property that is within the right-of-way of the route of transmission line associated with the Mark Twain Project, as that route is described in Ameren Transmission Company of Illinois’ (ATXI) application in EA-2015-0146, along with the property address and parcel numbers (used for tax identification purposes) for each such interest.
5. For each parcel of real property identified in your response to Data Request Number 4, please state whether the parcel currently has within its boundaries other electric lines. For each line, if known, please identify the owner of the line or, alternatively, the record holder of any easement upon which the line is located. Further, if known, please identify what restrictions, if any, the lines currently located on the parcel place on the ability to conduct farming operations or ranching activities on the particular parcel (for the question reflected in this sentence, a copy of the easement, if in the possession of the owner, may be provided in lieu of an answer).
6. For each parcel of real property identified in your response to Data Request Number 4, please describe the farming or ranching activities that are being conducted, or that the owner plans to conduct, on the property.

7. For each member identified in your response to Data Request Number 2, please identify whether such member has attended any meeting held or hosted by ATXI regarding the Mark Twain Project.
8. Please provide copies of all documents (whether in paper form, e-mails, or otherwise) made available and/or distributed by the Neighbors United, its members or agents to the public or a subset thereof (or to any news media personnel) regarding the Mark Twain Transmission Project, and please provide a list of the recipients of each such document.
9. Please provide a complete copy of the PowerPoint presentation which includes the slide entitled "Ways to Make the Project More Expensive for ATXI" (as shown in a photograph posted on Neighbors United public Facebook page).
10. Please identify any communication between a member or members of Neighbors United or its agents, and any County Commissioner in Schuyler, Adair, Knox, Shelby or Marion counties related to the proposed Mark Twain Project. For each such communication please provide:
  - a. the names of the Neighbors United member(s) or County Commissioner(s) involved,
  - b. the date of the communication,
  - c. the form of communication (i.e., personal, written, electronic, telephonic communication, etc.),
  - d. the substance of the communication, and
  - e. attach any written document(s) or material(s) provided to or exchanged with the County Commissioner(s) related to said communication.
11. Please designate by name and address, which, if any, of the members of Neighbors United support the use of renewable energy in Missouri.
12. For each and every communication between a member or members of Neighbors United or its agents and ATXI its employees or agents, please provide:
  - a. the agent or employee's name(s),
  - b. the Neighbors United member(s) (or other persons) name(s),
  - c. the date of the communication,
  - d. the form of communication (i.e., personal, written, electronic, telephonic communication, etc.),
  - e. the substance of the communication, and
  - f. attach any written document(s) or material(s) provided to or exchanged with the agent or employee in said communication.
13. Please designate any of the Neighbors United members identified in response to Data Request Number 2 above who have asserted a claim or complaint about any alleged health effects upon humans or livestock related to the existence of electric lines on or near their real property. Further identify the nature of that claim or complaint, when it was communicated, who it was directed to, and the status or resolution of the claim or complaint.



14. Provide a copy of your responses to all data requests propounded upon you by any other party to this proceeding, both prior to and subsequent to the date of this request.

Arturo A. Hernandez III, J.D.  
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*Missouri*  
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September 3, 2015

*Sent via electronic mail*

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**RE: Objections and Request for Additional time to respond to ATXI's First Set of Data Requests to Neighbors United Against Ameren's Power Line received August 24, 2015, corrected August 26, 2015.**

Mr. Lowery,

Neighbors United received ATXI's First Set of Data Requests to Neighbors United on August 24, 2015, and your corrected data requests on August 26, 2015. Neighbors United hereby objects and requests additional time as follows:

**Data Request 1:**

Please provide copies of the Articles of Incorporation of a Nonprofit Corporation and Domestic Nonprofit, the minutes of the organizational meeting required by section 355.111, RSMo., and a list of the directors of the corporation, as contemplated by section 355.111(2), RSMo., of Neighbors United Against Ameren's Power Line ("Neighbors United").

Response: Neighbors United objects to ATXI's request for a copy of the Articles of Incorporation of a Nonprofit Corporation and Domestic Nonprofit as such is equally accessible to ATXI on the Missouri Secretary of State's website.

Without waving any objection, Neighbors United will respond to the data request with information since Neighbors United's date of incorporation, June 17, 2015, and provide ATXI with a copy of the Articles of Incorporation. Neighbors United respectfully requests until September 22, 2015 to respond to Data Request 1. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to the minutes has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 2:**

Please identify by name and address each member of Neighbors United and for each such member, state from whom they receive electrical service (or, if they do not receive electrical service, please so state).

EXHIBIT B - MOTION TO COMPEL DISCOVERY

Response: Neighbors United objects to ATXI's request for Neighbors United to state for each member of Neighbors United their address if other than the address of the property subject to the proposed line and from whom they receive electrical service as such request asks for information equally accessible to ATXI after receipt of the members' property addresses subject to this case, and the request asks for information not known to Neighbors United, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a general list of electric service providers in each county where the members' property subject to the proposed line resides. In regard to the general list of service providers and the members' names and addresses of the property subject to the proposed line, Neighbors United respectfully requests until September 22, 2015, to respond to this part of the data request. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 3:**

Please identify the total number of members of Neighbors United.

Response: Neighbors United does not object to this request but respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 4:**

Please identify, by name and address, each member of Neighbors United that claims an ownership or other legal or equitable interest in some portion of the real property that is within the right-of-way of the route of transmission line associated with the Mark Twain Project, as that route is described in Ameren Transmission Company of Illinois' (ATXI) application in EA-2015-0146, along with the property address and parcel numbers (used for tax identification purposes) for each such interest.

Response: Neighbors United objects to ATXI's request for Neighbors United to state for each member of Neighbors United's addresses if other than the address of the property subject to the proposed line and for parcel numbers as such request asks for information equally accessible to ATXI after receipt of the members' addresses for property subject to the proposed line, and the request asks for information not known to Neighbors United, is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

In regard to the members' names and addresses for property subject to the proposed line, Neighbors United respectfully requests until September 22, 2015, to respond to this part of the data request. The additional time to respond is necessary due the smaller size and resources of

the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 5:**

For each parcel of real property identified in your response to Data Request Number 4, please state whether the parcel currently has within its boundaries other electric lines. For each line, if known, please identify the owner of the line or, alternatively, the record holder of any easement upon which the line is located. Further, if known, please identify what restrictions, if any, the lines currently located on the parcel place on the ability to conduct farming operations or ranching activities on the particular parcel (for the question reflected in this sentence, a copy of the easement, if in the possession of the owner, may be provided in lieu of an answer).

Response: Neighbors United objects to this data request in its entirety as such request asks for information that is protected by the attorney-client privilege and work product privilege, requests information equally accessible to ATXI after receipt of the members' names and addresses for property subject to the proposed line, and requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

**Data Request 6:**

For each parcel of real property identified in your response to Data Request Number 4, please describe the farming or ranching activities that are being conducted, or that the owner plans to conduct, on the property.

Response: Neighbors United does not object to this request but respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 7:**

For each member identified in your response to Data Request Number 2, please identify whether such member has attended any meeting held or hosted by ATXI regarding the Mark Twain Project.

Response: Neighbors United objects to this data request in its entirety as such request asks for information that is equally accessible to ATXI, requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation

as the legal entity and any ATXI meeting the corporation discussed attending after the date of Neighbor United's incorporation, June 17, 2015. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 8:**

Please provide copies of all documents (whether in paper form, e-mails, or otherwise) made available and/or distributed by the Neighbors United, its members or agents to the public or a subset thereof (or to any news media personnel) regarding the Mark Twain Transmission Project, and please provide a list of the recipients of each such document.

Response: Neighbors United objects to this data request in its entirety as such request asks for publicly available documents that are equally accessible to ATXI, requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation as the legal entity and any public or media documents distributed by the legal entity after the date of Neighbor United's incorporation, June 17, 2015. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 9:**

Please provide a complete copy of the PowerPoint presentation which includes the slide entitled "Ways to Make the Project More Expensive for ATXI" (as shown in a photograph posted on Neighbors United public Facebook page).

Response: Neighbors United objects to this data request in its entirety as such request asks for information that is protected by the work product privilege, requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

**Data Request 10:**

Please identify any communication between a member or members of Neighbors United or its agents, and any County Commissioner in Schuyler, Adair, Knox, Shelby or Marion counties related to the proposed Mark Twain Project. For each such communication please provide:

- a. the names of the Neighbors United member(s) or County Commissioner(s) involved,
- b. the date of the communication,

- c. the form of communication (i.e., personal, written, electronic, telephonic communication, etc.),
- d. the substance of the communication, and
- e. attach any written document(s) or material(s) provided to or exchanged with the County Commissioner(s) related to said communication.

Response: Neighbors United objects to this data request in its entirety as such requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation as the legal entity and any communication the corporation had with any County Commissioner in Schuyler, Adair, Knox, Shelby or Marion counties related to the proposed Mark Twain Project after the date of Neighbor United's incorporation, June 17, 2015. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 11:**

Please designate by name and address, which, if any, of the members of Neighbors United support the use of renewable energy in Missouri.

Response: Neighbors United objects to this data request in its entirety as such request is vague, requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation as the legal entity and its position on the use of renewable energy in Missouri after the date of Neighbor United's incorporation, June 17, 2015. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 12:**

For each and every communication between a member or members of Neighbors United or it agents and ATXI its employees or agents, please provide:

- a. the agent or employee's name(s),
- b. the Neighbors United member(s) (or other persons) name(s),

- c. the date of the communication,
- d. the form of communication (i.e., personal, written, electronic, telephonic communication, etc.),
- e. the substance of the communication, and
- f. attach any written document(s) or material(s) provided to or exchanged with the agent or employee in said communication.

Response: Neighbors United objects to this data request in its entirety as such request asks for information that is equally accessible to ATXI, requests information not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation as the legal entity and any communication between the corporation and ATXI after the date of Neighbor United's incorporation, June 17, 2015. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 13:**

Please designate any of the Neighbors United members identified in response to Data Request Number 2 above who have asserted a claim or complaint about any alleged health effects upon humans or livestock related to the existence of electric lines on or near their real property. Further identify the nature of that claim or complaint, when it was communicated, who it was directed to, and the status or resolution of the claim or complaint.

Response: Neighbors United objects to this data request in its entirety as such request asks for information that is not known to Neighbors United, is irrelevant and seeks information not reasonably calculated to lead to the discovery of admissible evidence, is burdensome and harassing, would impose unnecessary or unjust burdens or expense on Neighbors United under the circumstances and would require Neighbors United to collect information not in Neighbors United's possession or control on behalf of ATXI.

Without waiving any objection, Neighbors United will provide a response for the corporation as the legal entity and its position after the date of Neighbor United's incorporation, June 17, 2015, on health effects upon humans or livestock related to the existence of electric lines on or near real property. Neighbors United respectfully requests until September 22, 2015, to respond with this information. The additional time to respond is necessary due the smaller size and resources of the organization, the amount of data requested overall and that an administrator with access to some of the information has been out of the office since August 25, 2015, and will not return until September 11, 2015.

**Data Request 14:**

Provide a copy of your responses to all data requests propounded upon you by any other party

to this proceeding, both prior to and subsequent to the date of this request.

Response: No party has propounded data requests upon Neighbors United prior to ATXI's first request. Should Neighbors United receive further data requests, Neighbors United will forward ATXI the responses subject to the same objections and requests for additional time to the propounding party.

Respectfully,

**/s/ Jennifer Hernandez**

Jennifer Hernandez, MO Bar No. 59814

Attorney at Law

Hernandez Law Firm, LLC



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September 15, 2015

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*Re: Objections to ATXI's First Set of Data Requests to Neighbors United  
Against Ameren's Power Line*

Dear Jennifer:

This letter addresses objections made by Neighbors United to ATXI's first data requests in hopes of resolving this dispute without Commission action. ATXI acknowledges and agrees to your request for additional time until September 22, 2015, in which to respond to those requests to which you have not objected or have otherwise agreed to provide a limited response.

## **Data Request No. 1:**

Although I will address your qualification of providing information only since June 17, 2015, (the date Teri Page filed Articles of Incorporation attempting to convert Neighbors United from an unincorporated association to a not-for-profit corporation) later in my letter, such a qualification would be inappropriate here if the minutes of the organizational meeting were dated prior to the date of incorporation. I assume they are not, and it is my understanding that you have agreed to provide a full response to this data request on September 22, 2015.

## **Data Request No. 2:**

Although the scope of your objection to this request is unclear, I believe you have agreed to provide a list of the names of members of Neighbors United and the addresses of property they own "subject to the proposed line", as well as a general list of electric

service providers in each county. You appear to object to (1) providing names for all members of Neighbors United, (2) addresses for members of Neighbors United if the address is other than the address of the property subject to the proposed line, and (3) providing the specific electric service provider for each member or, if they do not have electric service, identifying that fact.

You assert that such information is readily available to ATXI, is information not known to Neighbors United, is burdensome and harassing, and would impose unnecessary or unjust burdens or expense. None of these objections withstand scrutiny. First, Data Request No. 2 simply asks for the name and address of each member of Neighbors United and from whom they receive electrical service (or a statement indicating that the member does not receive electrical service, if that is the case). This is not information in ATXI's possession nor otherwise accessible to ATXI. Neighbors United knows who its members are, knows how to contact them and, thus, has access to all of this relevant information.

Moreover, your bare allegation that the purpose for the request is to harass Neighbors United is false. Rather, the requested information is clearly relevant to this litigation. Here, ATXI seeks a certificate of convenience of necessity ("CCN") for the Mark Twain Project, and one of the factors the Commission will almost certainly consider is whether the requested service promotes the "public interest." *In re Tartan Energy Co.*, 3 Mo. P.S.C. 173, 177 (1994). Neighbors United moved to intervene in this action on the grounds that its members ("a majority" of whom "live or own property near the presently proposed route") opposed ATXI's application based upon the "negative impacts of the proposed project." The Commission is entitled to know the exact nature of the impacts of the Mark Twain Project on Neighbors United members, and both ATXI and the Commission are entitled to have an understanding with some degree of specificity what "majority" means and just what "near" the route means. "Near" might be 100 feet or 10 miles, depending on how your clients apply their definition.

In order to understand these impacts, information as to who the members are, where they live (in the immediate vicinity of the line, or elsewhere), whether they receive electrical service from a utility that would benefit from the Project, and, finally, whether they are served by an electric utility at all is relevant information. Each of these considerations bears on the issue of the public interest, and ATXI is entitled not only to the discovery of relevant information, but more broadly to the discovery of information that may otherwise lead to the discovery of relevant evidence. For example, there could be members that live near other power lines today and if that is so, the impact (or lack of impact) of those other lines is relevant to the reasons behind those members' opposition to the Project.

Finally, identification of its members is not “unduly” burdensome for Neighbors United. The fact that it takes some time and effort to respond to discovery is simply the nature of becoming a party to a case. In order for it to claim that it has over 375 members (as it did in its motion to intervene), it necessarily has to have identification of these members and an ability to communicate with these members. Although Data Request No. 2 does not restrict its request for electrical service providers to those within the path of the Mark Twain Project, ATXI will narrow its request for identification of electrical service providers to those who have an interest in property that the line will cross. ATXI insists, however, that those members who live “off-the-grid” or do not take electrical service be identified. The Commission is entitled to know the extent of the opposition to the Project that comes from those who do not directly rely upon (presumably, they acquire goods and services from persons who use electricity) electricity, as this information goes directly to their interest versus the interests of other Missourians who will benefit from the improved reliability and other benefits the Project will bring.

**Data Request No. 4:**

Neighbors United again refuses to provide the addresses of its members (other than the addresses of affected property subject to the proposed line) and refuses to provide parcel numbers of property within the Project’s right-of-way. I already addressed the invalidity of the objection to providing addresses of the members above. Regarding the remaining objection first, Neighbors United asserts that such information (presumably, parcel number information) is equally available to ATXI “after receipt of the members’ addressees for property subject to the proposed line.” That statement is not true. The tax assessments/tax bills we all receive every single year include parcel number information; as such, this information is far more readily available to property owners, but would require ATXI to conduct research perhaps in five different rural counties (most or all of which do not provide this information online) on each parcel. This objection is without basis.

Neighbors United next asserts that the requested information is not known to Neighbors United and, similarly, that the data request would require Neighbors United to collect information not in its possession or control. This too is not true. Neighbors United is not entitled to hide behind a filing made by one of its most active members (since its inception at least a year ago) to shield relevant and otherwise discoverable information. The entity that Teri Page incorporated on June 17 has no interest apart from that of its members. Neighbors United’s application to intervene is replete with justifications for its intervention based on the impact the line might have on these members. None of the impacts, even if true, exist for the new corporation independent of its members.

Moreover, while it is true that a party is required to furnish information “as is available to the party” (Mo. R. Civ. P. 57.01(c)), an organization that is a party cannot avoid answering if it can obtain the information from sources under its control. *State ex rel. Mid-American Pipeline Co. v. Rooney*, 399 S.W.2d 225, 228-229 (Mo. App. W.D. 1965). This new entity cannot avoid responding to this data request by first claiming that it has an interest sufficient to justify intervention based upon impacts of the Project on its members, and then claiming ignorance of information in the possession of (or easily accessible by) its members.

The relevance of the requested information is obvious. Identification of the ownership of property within the proposed route of the members of a citizens-group intervener is relevant information that the Commission should have as it evaluates whether the Project is in the public interest. Moreover, information (such as whether the property owner resides at the affected parcel) regarding the *degree* to which members who own property will be affected by the transmission line is also relevant.

Neighbors United has agreed to provide the members names and addresses for property subject to the proposed line in response to this data request. Providing the parcel numbers and the mailing address of those with legal or equitable interests in affected parcels does not constitute an additional undue burden or expense.

**Data Request No. 5:**

ATXI requests information regarding the presence of other electric lines on the affected parcels owned by Neighbors United members and, with regard to those lines, the line owner or easement holder and, if known, the restrictions these lines place on the ability to conduct farming operations or ranching activities. Neighbors United objects to providing any responsive information.

I do not understand your objection based upon attorney-client privilege and work product protection. While Neighbors United has made it clear that one of the arguments it will advance in opposing the Project is that the proposed transmission line will impair property owners’ constitutional right to farm (an argument that implicitly acknowledges the relevance of ATXI’s request), whether or not a parcel has an electric line on it and whether that line is claimed to impair the property owner’s ability to farm are facts—not mental impressions of an attorney—that are subject to discovery. Factual matters within a party’s knowledge are not protected from discovery just because the information is developed as a result of a party’s investigation. *State ex rel. Hof v. Cloyd*, 394 S.W.2d 408 (Mo. *en banc* 1965). Nor does the mere fact that otherwise relevant information may have been discussed with counsel make that information privileged. *In re Union Elec.*

*Co., d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, 2011 Mo. PSC LEEIXIS 429 at \*9-10 (April 19, 2011). Neither the attorney-client privilege nor the work product doctrine protect this information from disclosure. To the extent that Neighbors United asserts attorney-client privilege or the work product doctrine, it bears the burden to establish the privilege, and it must provide an itemized log with sufficient particularity so that a determination may be made as to whether these items may, in fact, be properly withheld.

As is the case with other requests seeking information in possession of Neighbors United members, Neighbors United has the obligation to respond to data requests if it can obtain the information from sources (members) under its control. In addition, this request is not designed to harass or unduly burden Neighbors United; rather, ATXI seeks to obtain information directly bearing on the weight of Neighbors United claims, and this inquiry is appropriate. *See In re Missouri-American Water Co.'s Tariff to Revise Water and Sewer Rate Schedules*, 2003 Mo. PSC LEXIS 1552 at \*6 (December 2, 2003) (“‘Relevant’ evidence is that which tends to prove or disprove a fact of consequence to the pending matter.”). As the request indicates with regard to restrictions placed upon farming by a particular electric line easement, the request asks for information—if available—and allows the production of easement documents in lieu of providing a written response. Your objections are not supported.

#### **Data Request No. 7:**

While your agreement to provide ATXI list of members who attended a meeting held or hosted by ATXI regarding the Mark Twain Project after June 17, 2015, would provide no information, given that ATXI's meetings held or hosted all occurred prior to that date, ATXI is willing to conditionally withdraw Data Request No. 8. If, however, Neighbors United refuses to provide an entire list of its membership, then ATXI's request—unlimited by any artificial date—stands.

#### **Data Request No. 8:**

Neighbors United again seeks to limit its response to this data request to the date of the incorporation of the new entity, June 17, 2015, even though those constituting the entity's members have clearly been acting as an organized group since at least the inception of its Facebook page (“Neighbors United Against Ameren”) on September 8, 2014, and its own website (<http://www.neighborsunitednemo.com>), which was registered on January 1, 2015. Teri Page, the incorporator for Neighbors United has been very active in the group for much, if not all, of the group's existence—in fact, she provided answers on behalf of Neighbors United in a news article about the group, published in *The Edina Sentinel* on

November 12, 2014. Moreover, the groups' website, developed and deployed prior to any incorporation, has continued to post information about the Project after the incorporation. Ms. Page, a member of this group's Facebook page, has continued to post on that Facebook page in opposition to the Project as have others who, given the substance of their posts, are clearly "members." The fact that an entity was incorporated on June 17, 2015 (the day before it moved to intervene in this case), has no relevance to the fact that it has been carrying on its activities since the fall of 2014 and continues to do so independent of that entity. To use the incorporation date as a shield to avoid scrutiny of its actions is inappropriate, especially in response to a data request that seeks information from "Neighbors United, its members or agents" regarding the group's interests as revealed in information it has distributed publicly and given its stated justification for this entity's intervention in the first place.

Production of the documents about the Project distributed to the public by Neighbors United and identification of their recipients is relevant information that is not "equally accessible" to ATXI. The request does not seek to unduly burden Neighbors United and is not for the purpose of harassment; rather, it is instead intended to identify the concerns and interests (and the extent of those interests as compared to the interests of others in the area and the public as a whole) of Neighbors United related to its opposition to the Project—all of which relate to whether the Project is in the public interest.

**Data Request No. 9:**

Teri Page made a public presentation on December 3, 2014, on "Ways to Make the Project More Expensive for ATXI"—a fact that was documented by a photograph on the group's Facebook page, which was a public page at the time the photograph was posted. From the slide shown in the photograph, it is clear that the PowerPoint presentation related to the group's overall efforts in opposing the Project and was not focused on any upcoming litigation. Accordingly, production of this document is not protected by the work product doctrine. Even if it had been so protected at one time, the fact that the presentation was made in a public meeting and then posted on a public Facebook page destroyed any work product protection it might have once had. Courts have routinely held that social media information is not privileged and does not enjoy any privacy right precluding discovery of this type of information as long as it is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., EEOC v. Original Honeybaked Ham Co.*, 2012 U.S. Dist. LEXIS 160285 at \*5-6 (D. Colo. Nov. 7, 2012) ("There is a strong argument that storing such information on Facebook and making it accessible to others presents an even stronger case for production, at least as it concerns any privacy objection. It was [the plaintiffs] who, by their own volition, created relevant communications and shared them with others.").

This presentation is relevant to identify the true nature of Neighbors United interest in opposing the Project and, as it reveals the group's plan to make the Project more expensive for ATXI, bears on an issue of interest to the Commission—whether the Project is economically feasible. Because Ms. Page is making the presentation, the PowerPoint presentation is information that is clearly available from a source under the control of Neighbors United, and it must be produced.

**Data Request No. 10:**

Neighbors United again wants to limit its response to this data request to its incorporation date. As explained above, this date restriction is irrelevant to the on-going activities of the group and its members. Communication that members of Neighbors United have had with members of the county commissions for each of the five counties along the route of the Project is relevant or is otherwise likely to lead to the discovery of relevant information. One of the conditions of a CCN issued by the Commission could relate to county assents from each of the county commissions, and information provided by Neighbors United related to the project to those commissions is relevant to ATXI's efforts to obtain those assents. Public information also shows that Neighbors United was deeply involved in encouraging county commissions to pass resolutions and send them to the Commission in an obvious attempt to influence the decision in this case. Neighbors United lacks justification to limit its response to only those contacts occurring after June 17, 2015. Neighbors United should provide a full response, including all contacts its individual members have had with county commissioners.

**Data Request No. 11:**

Whether the Project is in the public interest—indeed, in the interest of any of the members of Neighbors United—has to do, in part, with the Project's ability to supply renewable energy. Comments made at the public meetings indicate that several participants were in favor of renewable energy; in fact, Ms. Page lives off-the-grid and has publicly stated her preference for renewable energy over coal-produced electricity sources. This information is relevant and discoverable.

Neighbors United has no justification for limiting its response to the “legal entity” as of June 17, 2015. The data request seeks information readily available to Neighbors United as its members are ready sources of information. As stated throughout this letter, Neighbors United cannot avoid scrutiny of its members' interests and motives simply by filing documents with the Secretary of State's office. Please provide a response unlimited by time or strictly to the “legal entity” or “corporate person” of Neighbors United.

**Data Request No. 12:**

This data request essentially asks for any statements made by ATXI and known to the members of Neighbors United that have the potential for being used as admissions against ATXI at the hearing. In fact, various persons posted comments on the Facebook page set up by Neighbors United attributing statements to ATXI representatives; it is quite probable that many—if not all—are members of Neighbors United. This type of request is commonly found in many pattern interrogatories in civil courts and the courts routinely conclude that a party is entitled to discover from other parties statements of which the other parties are aware that are attributed to that party or its agents. Neighbors United has no justification for refusing to provide such information here.

Further, ATXI incorporates its prior analysis in response to the offer of Neighbors United to restrict its response to communication between the corporation and ATXI after June 17, 2015; the restriction is meaningless (there was no communication between ATXI and the “corporation” during this or any time), and can only be interpreted as an effort to avoid an obligation any other party would have in the normal litigation process. A complete response to this data request is the only proper response.

**Request No. 13:**

The objections posed to this request mirror the objections posed by Neighbors United to other data requests. They are no more compelling here. Comments on the Facebook page for Neighbors United and in the media by those purporting to represent Neighbors United have frequently raised concerns regarding the danger to human and animal health from the proposed transmission line. No doubt that the members of Neighbors United believe this is one of the reasons the Project is not in the public interest. ATXI is entitled to discover information bearing on this issue. As such, ATXI is entitled to know what, if any, complaints regarding human or animal health that the members of Neighbors United (identified in response to Data Request No. 2) have made with regard to electric lines on or near their property.

Limiting your response to the corporate entity and after June 17, 2015, is again a meaningless offer. In a further effort to resolve this discovery dispute, ATXI offers to limit its request to those members identified in response to Date Request No. 5. Please provide a complete response to this data request.



*Jennifer Hernandez*  
*September 15, 2015*  
*Page 9*

It is my hope that we can informally resolve the objections lodged by Neighbors United to ATXI's data requests. I will give you a telephone call after you have had an opportunity to review this letter in an effort to reach resolution of this dispute.

Sincerely,

*/s/ James B. Lowery*

James B. Lowery

Cc: Jeffrey Rosencrants, Ed Fitzhenry, Mike Tripp

**Meeting Minutes  
Neighbors United  
September 14, 2015**

Gina Briggs officiating,  
Julia Jack-Scott note taking

Paul Henry convenes our official annual membership meeting.

Paul Henry starts the meeting with some updates, and an agenda. Tonight, the group will vote to establish bylaws, an official office location (Gina Briggs's residence), a registered agent for the group (Paul Henry), a board of directors, and an executive committee appointed by the board.

The group votes to approve the bylaws presented by Mr. Henry  
The group officially votes in favor of four board of directors: John Leunen, Cliff Hollenbeck, Marian Spring, and Mark Easedale.  
The board of directors elects a slate of four serving officers: Gena Briggs president, Deborah Games vice president, John Leunen treasurer and Julia Jack-Scott secretary.  
NU sets our voting quorum at 20 members.

Paul Henry concludes and adjourns the annual membership meeting.

**PSC Witnesses and Information**

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\_\_\_\_\_ work product and attorney client communication \_\_\_\_\_

\_\_\_\_\_ \*\*\*.

\*\*\* \_\_\_\_\_ work product \_\_\_\_\_  
\_\_\_\_\_ \*\*\*.

**Treasury**

A treasury report was given, and the group discusses how much funds are available for legal support and expert testimony. Fundraising ideas are shared and discussed, including an appeal letter, a raffle for a quilt is suggested, a second auction is suggested, a matching-funds corporate donor is suggested.

**Misc**

Margaret Wilson gives an update about the \*\*\* \_\_\_\_\_  
\_\_\_\_\_ work product \_\_\_\_\_

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### **Data Request**

A few questions were asked about including members' addresses in the data request. The group will work with our attorney, Jennifer Hernandez, to provide the necessary information to ATXI.

The following data items are requested: any information sent to press or public after June 17<sup>th</sup>, so please send a copy to Teri Page if you sent a letter to editor or put an add in newspaper. A second request was about any communications with county commissioners after June 17<sup>th</sup>, they would like a copy of any information. A third one is a request for the opinion of NU group members about our stance on renewable energy, which Deborah and Jennifer are providing an answer for. A fourth question is about any communication our group has had with ATXI employees.

\*\*\* \_\_\_\_\_ work product \_\_\_\_\_

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The group discusses other information requested by Ms. Hernandez

Meeting Adjourned