

**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. )

**NEIGHBORS UNITED’S MOTION TO DISMISS APPLICATION**

**COMES NOW** Neighbors United Against Ameren’s Power Line (Neighbors United), by and through the undersigned counsel, and hereby moves the Commission to dismiss the Application of Ameren Transmission Company of Illinois (ATXI) in that it violates Article 1, Section 35 of the Missouri Constitution, Section 229.100, RSMo and Commission Rule 4 CSR 240-3.105(1)(D)1. In support of the Motion, the undersigned states as follows:

**ATXI’s Application Must Be Dismissed By The Commission Because Any Action Other Than Dismissal Violates The Missouri Constitution**

1. ATXI asks the Commission to grant it a Certificate of Convenience and Necessity (CCN) to build a transmission line through approximately 378 properties,<sup>1</sup> majority if not all, are engaged in farming and/or ranching practices, despite the Missouri Right-to-Farm Amendment 1 passed by voters on August 5, 2014.

2. The legislatively-referred constitutional amendment appeared on the ballot as “Shall the Missouri Constitution be amended to ensure that the right of Missouri citizens to engage in agricultural production and ranching practices shall not be

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<sup>1</sup> Direct Testimony of Douglas J. Brown, p. 6, l. 22; p. 7, l. 18; p. 8, l. 7.

infringed?” and was placed in the Missouri Constitution as Article 1, Section 35. Article 1 of the Missouri Constitution contains the Bill of Rights.

3. Article 1, Section 35 of the Missouri Constitution reads:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Article IV delineates the powers given to local government.

4. “In general, constitutional provisions are subject to the same rules of construction as other laws, except that constitutional provisions are given a broader construction due to their more permanent character.”<sup>2</sup> “The primary rule is to ‘give effect to the intent of the voters who adopted the [voter-adopted constitutional provision]’ by considering the plain and ordinary meaning of the words used.”<sup>3</sup>

5. When a word is not given a technical meaning or defined in the constitution, “...the Court determines the plain and ordinary meaning of the word as found in the dictionary.”<sup>4</sup>

6. Black’s Law Dictionary does not define “farming,” but it does define “farming operation” as a “business engaged in farming, tillage of soil, dairy farming,

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<sup>2</sup> *Neske v. City of St. Louis*, 218 S.W.3d 417, 421 (Mo. banc 2007) (overruled on other grounds), citing *StopAquila.org v. City of Peculiar*, 208 S.W.3d 895, 899 (Mo. banc 2006); *School District of Kansas City v. State*, 317 S.W.3d 599, 605 (Mo. banc 2010).

<sup>3</sup> *Pearson v. Koster*, 367 S.W. 3d 36, 48 (Mo. 2012), citing *Keller v. Marion Cnty. Ambulance Dist.*, 820 S.W.2d 301, 302 (Mo. banc 1991)

<sup>4</sup> *Brown v. Carnahan*, 370 S.W.3d 637 (Mo. banc 2012).

ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.”<sup>5</sup>

7. The dictionary does not define “ranching,” but it does define “ranch” as “1. an establishment maintained for raising livestock under range conditions. 2. a large farm used primarily to raise one kind of crop or animal.”<sup>6</sup>

8. “Practice” is defined as “1. habitual or customary performance; operation...5. the action or process of performing or doing something.”<sup>7</sup>

9. ATXI’s proposed line crosses through citizens’ properties in each of five counties (Marion, Shelby, Knox, Adair and Schuyler Counties) that are engaged in farming and/or ranching practices. See affidavits in Attachments A, B, C, and D attached hereto.<sup>8</sup>

10. While there may be a dispute as to the extent to which citizens’ farming and/or ranching practices will be impacted, neither ATXI nor Neighbors United dispute that some amount of farm and/or ranch property will be permanently removed from production.<sup>9</sup>

11. ATXI’s Application presents issues that require constitutional interpretation and application. Such questions are beyond the authority of administrative agencies.<sup>10</sup>

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<sup>5</sup> Black’s Law Dictionary 681 (9th ed. 2009).

<sup>6</sup> Dictionary.com Unabridged. Random House, Inc., <http://dictionary.reference.com/browse/ranch> (accessed: October 11, 2015).

<sup>7</sup> Dictionary.com Unabridged. Random House, Inc. <http://dictionary.reference.com/browse/practice> (accessed: October 11, 2015).

<sup>8</sup> The undersigned understands that there are affidavits from property owners in Marion County, however they were not received by the time of filing. The undersigned anticipates supplementing this Motion with the affidavits upon their receipt.

<sup>9</sup> See Attachment A, B, C, and D; and Direct Testimony of Douglas J. Brown, p. 6, ll. 6-15.

<sup>10</sup> See *Duncan v. Missouri Bd. for Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530–31 (Mo.App.1988). See also *Fayne v. Department of Social Servs.*, 802 S.W.2d 565 (Mo.App.1991).

Any Commission action other than dismissal would require the Commission to decide such questions.

12. In the alternative, if the Commission finds it has the authority to decide the constitutional question, the plain language of Article 1, Section 35 of the Missouri Constitution leads to a finding that any action other than dismissal of the Application violates the constitutional provision. ATXI requests relief that would permanently remove citizens' property from production and prevent these citizen farmers and ranchers from engaging in farming and/or ranching practices.

ATXI's Application Must Be Dismissed By The Commission  
Because ATXI Cannot Obtain The Necessary Approvals Required Under Section  
229.100, RSMo and Commission Rule 4 CSR 240-3.105(1)(D)1.

13. Commission Rule 4 CSR 240-3.105(1)(D)1. provides:

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows: 1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired[.]

14. Section 229.100, RSMo provides:

No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

15. The testimony of ATXI's witness Maureen A. Borkowski provides that "...ATXI will obtain the *necessary* assents [from the County Commissions for Marion,

Shelby, Knox, Adair, and Schuyler] before construction in each county.”<sup>11</sup> (emphasis added).

16. Additionally, the testimony of ATXI’s witness Maureen A. Borkowski provides that “...all *necessary* approvals or consents required to cross railroad lines and state highways within the proposed routes will be obtained before construction.”<sup>12</sup> (emphasis added).

17. However, the Commissions for each county--Marion, Shelby, Knox, Adair and Schuyler--have passed resolutions in opposition to ATXI’s Application for the Mark Twain Transmission Project through each of their respective counties. See Attachments E, F, G, H and I.

18. While ATXI states it will obtain all necessary approvals before construction, Commission Rule 4 CSR 240-3.105(2) provides “If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.”

19. As the County Commissions have passed resolutions stating they will not support and consent to the project in each of their respective counties, ATXI cannot provide the approvals it admits are necessary now or before a decision in this case. In the interest of judicial economy, the Commission should stay the procedural schedule (except the local public hearings) while it considers this Motion.

20. As ATXI cannot provide the necessary approvals required under the Commission’s rules and applicable statute, the Commission must dismiss their Application.

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<sup>11</sup> Direct Testimony of Maureen A. Borkowski, p. 7, ll. 8-12.

<sup>12</sup> Id. at p. 7, ll. 17-20.

**WHEREFORE**, Neighbors United moves for the Commission to dismiss ATXI's Application, suspend the procedural schedule in this case, except for the local public hearings, for judicial economy while the Commission considers this Motion, and for any other relief the Commission deems just and reasonable in the circumstances.

Respectfully submitted,

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ATTORNEY FOR NEIGHBORS  
UNITED AGAINST AMEREN'S POWER  
LINE

**Certificate of Service**

I certify that a true copy of the above and foregoing was served to all counsel of record by electronic mail this 13<sup>th</sup> day of October 2015.

**/s/ Jennifer Hernandez**

Jennifer Hernandez