

**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> )

**APPLICATION FOR REHEARING, MOTION FOR RECONSIDERATION,  
AND REQUEST FOR CLARIFICATION OF  
AMEREN TRANSMISSION COMPANY OF ILLINOIS**

COMES NOW Ameren Transmission Company of Illinois (ATXI) and, pursuant to § 386.500.1, RSMo.,<sup>2</sup> and 4 CSR 240-2.160, respectfully applies for rehearing, moves for reconsideration and requests clarification of the Commission’s *Report and Order* in the above-captioned proceeding, issued on April 27, 2016 (Order). In support, ATXI states as follows:

**Application for Rehearing**

Commission decisions must be lawful (i.e., the Commission must have statutory authority to do what it did), and they must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm’n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm’n*, 40 S.W.3d 381, 387-88 (Mo. App. W.D. 2001). In deciding whether a Commission order is “reasonable,” the question is “whether the [Commission’s] decision was supported by substantial and competent evidence on the whole record, whether the decision was arbitrary, capricious or unreasonable, or whether the [Commission] abused its discretion.” *State ex rel. Associated Nat. Gas Co. v. Pub. Serv. Comm’n*, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997); § 536.140.1(6). The Commission is a creature of statute and it has only the powers conferred on it

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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> All statutory references are to the Revised Statutes of Missouri (2000), unless otherwise noted.

by the Legislature. *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934).

In its April 27, 2016 Order, by which the Commission granted ATXI a Certificate of Convenience and Necessity (CCN) for the Mark Twain Transmission Project (Project), the Commission indicated that the CCN was contingent on providing certified copies of assents from the five counties through which the Project will be built. *Order* at 40. ATXI respectfully suggests that the Commission's imposition of such a condition was unreasonable and/or unlawful for the following reasons:

- Section 393.170.1, the statutory authority for ATXI's CCN, does not require that county assents be acquired for line certificates;
- Even if Section 393.170.2 were to apply to a CCN request by a transmission-only entity like ATXI, a county is not a proper "municipal authority" within the meaning of the statute on the facts of this case, since the statute refers only to electrical corporations providing end-use service to county residents or businesses and not to transmission-only companies providing only interstate transmission service to, among others, load-serving entities such as electrical corporations or other providers who may in turn provide service to county residents or businesses;
- By making its CCN decision in this case contingent upon obtaining assents from locally-elected county commissioners in the five counties, the PSC improperly subordinates its statutory duty to allow the construction of electric transmission system improvements that are necessary or convenient for the public service, including those that have statewide and regional implications, contrary to the terms of

the PSC Law,<sup>3</sup> and contrary to the principles enunciated in *Union Electric Co. v. City of Crestwood*, 499 S.W.2d 480 (Mo. 1973) and *Union Electric Co v. City of Crestwood*, 562 S.W.2d 344 (Mo. 1978); and

- The Commission has never before made a CCN for an interstate transmission line company that does not provide end-use electric service to Missouri customers contingent on that company obtaining § 229.100 assents.

Finally, making the CCN dependent upon the action of various county commissions unreasonably and unlawfully interferes with interstate commerce. “As the Missouri legislature has recognized in section 386.030, those powers granted to the Commission by Missouri statute are limited by the doctrine of preemption as to matters affecting interstate commerce.” *State ex rel. MoGas Pipeline, LLC v. Pub. Serv. Comm’n*, 366 S.W.3d 493, 498 (Mo. 2012). While the Commission’s regulation of ATXI as a public utility in Missouri does not otherwise conflict with federal laws governing interstate commerce, making the CCN contingent on further action by the counties unreasonably and unlawfully interferes with interstate commerce and, specifically, federal transmission policy in particular, given that the transmission line was approved as part of the Midcontinent Independent System Operator, Inc.’s Federal Energy Regulatory Commission-approved transmission expansion and planning process as a project necessary to meet the needs of the interstate electric transmission system.

For these reasons, the Commission’s April 27, 2016 Order conditioning the CCN on ATXI obtaining county assents is unreasonable and/or unlawful, and the Commission should grant ATXI rehearing on that sole issue.

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<sup>3</sup> The PSC Law is codified in Chapter 386, RSMo. and in parts of Chapter 393, RSMo. See § 386.010.

### **Motion for Reconsideration**

By making the CCN contingent upon ATXI obtaining the assents of all five counties before construction can commence, the Commission may unnecessarily delay construction of the entire Project. The Project's original in-service date was 2018, and delay of the Project will result in a corresponding delay in benefits to Missouri customers and increased costs because of a longer development and construction timeline for the Project.<sup>4</sup> As the evidence at the hearing demonstrated, each year of Project delay deprives Missouri of at least \$97 million of benefits.<sup>5</sup> In addition, delay of the Project could result in other reliability issues in the transmission system in addition to the loss of those economic benefits.<sup>6</sup> Wind that could otherwise develop in the Adair Wind Zone, or be imported from outside Ameren Missouri's control area, would be delayed, including the specific 400 MW wind generation facility already proposed in Schuyler County.<sup>7</sup> Moreover, delay upsets the careful sequencing of the Multi-Value Project (MVP) portfolio as a whole, leading to problems on Ameren Missouri's 161-kV system caused by the fact that the rest of the MVPs are being placed in service without the needed connections provided by Mark Twain.<sup>8</sup>

Consequently, regardless of whether the Commission grants rehearing on the assent-related contingency, ATXI respectfully requests that the Commission reconsider the scope of the assent condition and narrow the same in an effort to mitigate Project delay and the associated consequences.

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<sup>4</sup> *Tr.*, Vol. 5 at 192:15-194:14.

<sup>5</sup> Ex. 21, Sch. TS-03, Table 2; *Tr.*, Vol. 5 at 159:3-8.

<sup>6</sup> *Tr.*, Vol. 9 at 587:24-589:10.

<sup>7</sup> *Tr.*, Vol. 5 at 193:2-194:5; 196:23-197:2.

<sup>8</sup> *Id.* at 199:10-201:5 (where Mr. Kramer explains the reliability concerns and additional costs, which would not be regionally allocated, imposed on Ameren Missouri if the planned sequencing of the MVPs are upset by a delay in the Mark Twain Project).

To avoid these negative consequences, ATXI requests that the Commission promptly modify the contingency so that construction may commence in any county for which ATXI provides the required evidence that an assent under Section 229.100 has been obtained. This modified contingency would allow the Project to proceed while the assents in other counties and any related legal proceedings are addressed. While ATXI believes a condition that requires it to obtain assents is unnecessary, as indicated above, this more narrowly tailored contingency is reasonable in that it would mitigate disruption and delay of the Project and the resulting detriments the disruption and delay would otherwise cause. Finally, this modified contingency would result in no harm in a county that has granted its assent to ATXI. Under § 229.100, each county has control over the roads in *that* county, meaning that if County A has given its assent to use County A's roads, County B has no vested interest in construction that would take place over County A's roads regardless of the status of an assent request in County B relating to the use of County B's roads. A modified contingency that would mitigate these detriments could read: "Construction in a particular county under the certificate is contingent upon ATXI providing a certified copy of a county assent for that county or otherwise providing evidence that an assent is not required."

#### **Request for Clarification**

Whether or not the Commission grants ATXI's rehearing or reconsideration requests, it should promptly clarify its April 27, 2016 Order by correcting it to reflect the evidence and certain conditions that had been agreed upon by ATXI and the Staff.

First, condition "3" appearing at page 40 of the Order should not have been imposed because, as the Staff confirmed, the condition was already satisfied when the plans and specifications were filed with David Endorf's Surrebuttal Testimony. *Staff's Positions* at 6

(stating that since Mr. Endorf filed the plans and specifications, “*this is no longer a condition the Commission should impose.*”). Accordingly, condition “3” should be removed or, alternatively, the Order should be clarified to reflect that it has been satisfied.

Second, condition “7”, appearing on page 42 of the Order, references *Schedule DB-R-2* to Dan Beck’s Rebuttal Testimony when it should reference *Schedule DBR-SR2* to ATXI witness Doug Brown’s Surrebuttal Testimony. That the reference is mistaken is made clear by the Staff’s Positions (page 9), where the Staff states as follows:

(6) *In lieu of the condition Staff recommended “[t]hat ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DB-R-2 attached to this Rebuttal Testimony [of Daniel I. Beck],” the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DBR-SR2 to the surrebuttal testimony of ATXI witness Douglas J. Brown are acceptable. A copy of that schedule is attached.*

The schedule attached to the Staff’s Positions is the agreed-upon final version of the Procedures for Construction, Repair and Maintenance of Right-of-Way – Mark Twain Project.<sup>9</sup> Unlike Mr. Beck’s original *Schedule DB-R-2*, which was adapted from Case No. EO-2002-351, the agreed-upon Procedures for this Project was the product of a collaborative effort with the Staff to tailor a set of Procedures to appropriately and reasonably address construction, maintenance and repair issues relating to the Project’s right-of way. That this was the parties’ intent is confirmed by hearing testimony and the Staff’s post-hearing brief.<sup>10</sup> Accordingly, ATXI requests that the Commission clarify its April 27, 2016 Order by making reference to *Schedule DBR-SR2* and witness Douglas J. Brown in condition “7” of the Order.

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<sup>9</sup> Ex. 8, *Douglas J. Brown Surrebuttal* at 7:1-13; 16:8-17:6; *see also* 18:8-10 (“The fact that the standards and procedures go well beyond the recommended conditions reflected in Mr. Beck’s *Schedule DB-R-2* . . .”).

<sup>10</sup> *Tr.*, Vol. 5 at 261:13-262:8; Vol. 10 at 725:7-11; Staff’s Initial Brief [EFIS Item No. 263] at 35 (“That Ameren Transmission Company of Illinois comply with the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DBR-SR2* to the surrebuttal testimony of ATXI witness Douglas J. Brown.”).

Third, at page 42 of the Order, conditions “7” and “8” are duplicative, and a condition proposed by Staff and not opposed by ATXI is omitted. Staff’s Initial Brief sets out the proposed additional condition as follows:

That Ameren Transmission Company of Illinois file with the Commission in this case all required approvals and permits—e.g., land disturbance permits, Missouri State Highway Commission permits, US Fish & Wildlife permits, and EPA permits—before beginning construction on that part of the Mark Twain project where the approvals and permits are required.<sup>11</sup>

At hearing, Mr. Beck clarified that Staff’s proposed condition was not intended to identify what permits may or may not be required (e.g., Mr. Beck testified that he did not know of any specific permit that EPA or Fish and Wildlife would require) or that all permits for the entire line must be acquired prior to any construction (Mr. Beck testified that transmission projects are done in segments and his expectation was that the permits required for the particular segment must be submitted prior to construction).<sup>12</sup> ATXI respectfully requests that the Commission clarify its Order by removing the duplicate condition enumerated as “8” and insert in its place Staff’s proposed condition.

Finally, the Commission omitted another agreed-upon condition recommended by the Staff, as follows:

*That ATXI shall be required to file with the Commission the annual report it files with FERC.*

Accordingly, the Commission should add this condition, as agreed.

**WHEREFORE**, ATXI requests the Commission enter its order granting rehearing in this matter on the sole issue of the contingency relating to county assents and, whether or not rehearing on that issue is granted, promptly reconsider and modify the specific wording of the

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<sup>11</sup> Staff’s Initial Brief [EFIS Item No. 263] at 32.

<sup>12</sup> *Tr.*, Vol. 10, 726:3-729:20.

county assent-related contingency and otherwise promptly clarify, by modifications to the Order, other conditions specified herein in the manner outlined above.

Respectfully submitted,

/s/ James B. Lowery

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Dated: May 26, 2016



**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing has been e-mailed, this 26<sup>th</sup> day of May, 2016, to counsel for all parties of record.

*/s/ James B. Lowery* \_\_\_\_\_  
An Attorney for Ameren Transmission  
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