

**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> )

**ATXI'S REPLY TO NEIGHBORS UNITED'S RESPONSE TO  
MOTION TO COMPEL AND REQUEST FOR PROMPT RULING**

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

**Reply to Response to Motion to Compel**

**Background**

1. In its response to ATXI’s motion to compel discovery, Neighbors United argues that its individual members should not be made to supply information relating to any Neighbors United activity that occurred prior to incorporation of the new entity; that Neighbors United should only have to provide responsive information from the corporate entity and not its individual members,<sup>2</sup> and that any responsive information from its members it refuses to provide to ATXI is already in ATXI’s possession or that ATXI has “equal access” to that information. These objections lack merit. Moreover, Neighbors United cites no case law, statute or other legal support for its refusals based on these grounds, and it completely ignores the case law cited by

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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> Neighbors United suggests that all 14 data requests propounded by ATXI seek information from its individual members; in reality, eight data requests seeking information from Neighbors United individual members are in dispute; one other seeks a specific document created by Neighbors United leadership.

ATXI in its motion to compel, which holds that it is required to produce information from those under its control; here, its members.

Neighbors United must respond to data requests  
seeking certain information about its individual members.

2. While Neighbors United filed its organizational papers with the Missouri Secretary of State as a nonprofit corporation on June 17, 2015, just one day prior to its motion to intervene in this proceeding, it is uncontroverted that several of its members were acting in opposition to ATXI's Mark Twain Project ("Project") dating back to the fall of 2014. Ironically, despite nearly a year of meetings, fundraising and active opposition to the Project, when it came time to respond to data requests related to its activities this newly formed (yet long time opponent) refused and continues to refuse to provide basic information about its individual members, claiming that its only obligation is to provide information from the date it officially filed its Articles of Incorporation of a Nonprofit Corporation. Neighbors United does not dispute the relevance of the information sought. Indeed, there can be no question that the type of information sought (whether they take electric service and, if so, who provides electrical service to the members, are they property owners who claim to be "affected by" the proposed Project, did their members have contacts with the county commissions, whether there are existing electric lines on the property, and whether they have made any claims for injury related to the presence of electrical lines on their property)<sup>3</sup>, is the type of information reasonably calculated to lead to the discovery of admissible evidence.

3. As its intervention application indicates, 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

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<sup>3</sup> ATXI refers the Commission to its initial motion to compel where ATXI explains the relevance of the information sought.

active members one day before the entity intervened to shield relevant and otherwise discoverable information. Neighbors United’s website, utilized both before and after filing for incorporation on June 17, 2015 boasts, in fact, that its ideas, strategy and decision-making is expressed by the voice of its individual members and is not that of a legal entity or a particular leader or employee:

We meet once a week to discuss ideas and strategies (legal, political, media, and outreach), and our decision-making is entirely through group voting. **Thus, our direction is steered by the collective voice of the diverse group, and we are strengthened by the many talents, connections, and wisdom of the people involved.**<sup>4</sup>

ATXI’s request for information relating to the various interests and claims of the members of Neighbors United is entirely proper.

4. Asserting that the Commission does not have authority to require individual members to provide information, Neighbors United instead argues that it is just like the other interveners—MIEC, United for Missouri, and IBEW. It is not. Neither MIEC nor United for Missouri registered as a nonprofit corporation the day before each intervened.<sup>5</sup> Moreover, MIEC and United for Missouri’s Articles of Incorporation both indicate that they have no members; Neighbors United’s Articles of Incorporation indicate that it does have members. In addition, neither MIEC nor United for Missouri held itself out to the public as the same group both before and after its organization, as Neighbors United has done. As for IBEW, it is an unincorporated association, and its structure in no way supports Neighbors United’s claim of like status.

Neighbors United is unique. Only Neighbors United was organized in contemplation of litigation, specifically its intervention in opposition to the Project. The fact that this “collective

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<sup>4</sup> <http://www.neighborsunitednemo.com/about/> (accessed October 19, 2015) (emphasis in original).

<sup>5</sup> Missouri Secretary of State records demonstrate that United for Missouri was organized in June 2010 and that MIEC was organized in February 1999.

voice” was conveniently organized as a group the day before it intervened in this proceeding is more than mere coincidence. The attempt by Neighbors United to use its recent incorporation as a shield against relevant discovery should not be permitted.

5. While ATXI agrees that the individual members of Neighbors United are not parties to this action, it also notes that it is not asking this Commission to issue an order compelling any individual member of Neighbors United to respond to any particular data request. Instead, the order sought is directed at Neighbors United, and it has never refuted that it has an obligation to provide answers if the information sought can be obtained 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). Indeed, Neighbors United has already demonstrated that it has control over its members when it wants them to provide the “personal” information to support its case—despite the alleged “chilling effect” this supposedly would have on their participation in the group. As attachments to the Motion to Dismiss that it filed in this action on October 13, 2015, Neighbors United included 47 affidavits<sup>6</sup>—at least 35 of them from various members across northeast Missouri. Those affidavits contain extensive personal information and perspectives of these members which, not surprisingly, are totally supportive of Neighbors United’s themes in opposition to the certificate requested in this case. Clearly Neighbors United can (and does) spend significant time and effort to obtain information from its members when it suits it, demonstrating that indeed it does control the information ATXI seeks in discovery. In addition, Neighbors United also attached to its motion copies of resolutions opposing the Project that its members—and not the corporate entity—had obtained from various county commissions to

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<sup>6</sup> Considerably more than the “approximately 30 members” who regularly attend its meetings. Neighbors United’s Response to ATXI’s Motion to Compel at ¶ 24.

support its motion.<sup>7</sup> The bottom line is that Neighbors United only wants to provide information from its members that it considers helpful. Neighbors United certainly has control over its members, and there is no reason that it should not be ordered to make its best effort to timely provide information within that control to ATXI.

Neighbors United must respond to data requests  
seeking information prior to the date it incorporated.

6. Even though Neighbors United does not dispute that it has been active since the fall of 2014,<sup>8</sup> Neighbors United wants to avoid providing discovery of its activities prior to the date one of its principal leaders chose to file its organizational documents. By June 17, 2015 “Neighbors United Against Ameren’s Power Line” was already a well-know and vocal opponent of the Project. The corporate status of Neighbors United has little significance to its organized efforts beginning last fall; indeed, whether it was an unincorporated association or a nonprofit corporation would have little or no bearing on members of the public who saw signs posted by Neighbors United, read articles about Neighbors United, and visited Neighbors United’s website or its Facebook page. Stated differently, Neighbors United only has standing in this docket because of the alleged impacts the Project may have on its members. If that’s not the case, Neighbors United should be dismissed from the case. Neighbors United should be compelled to provide information available to it and/or within its control and not be allowed to use its belated incorporation as a shield.

7. One particular data request provides a ready example in this regard. Data Request No. 9 requested a copy of a PowerPoint presentation entitled “Ways to Make the Project More

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<sup>7</sup> To the extent notices of the County Commission meetings were properly given under the Sunshine Law (in some instances they were not properly given), the notices generally reflect the appearance of individual Neighbors United members and not this new corporate entity.

<sup>8</sup> See ATXI’s Motion to Compel Discovery at ¶ 11(a)-(c).

Expensive for ATXI.” Neighbors United argues that the document is not subject to production because the presentation was created before Neighbors United came into legal existence. This argument highlights the pretense behind Neighbors United’s refusal to provide information in its possession it considers it harmful to its case—the presentation was given by the eventual incorporator who was accompanied by the future president of Neighbors United at a public meeting of Neighbors United and a photograph showing one page of the presentation was posted on Neighbors United’s public Facebook page. Neighbors United should not be able to prevent discovery of information it presented to the public (or to the individual county commissions) simply by strategically registering as a nonprofit the day before it intervened in this action. The scope of discovery is traditionally quite broad and was never intended to permit a party to provide only that information it deems helpful to its cause. Finally, any dispute as to whether a particular statement was authorized by the legal entity is a matter that goes to admissibility and not discoverability of the information sought.

The information sought is not in ATXI’s possession or readily available to ATXI.

8. There is little more to say here. ATXI explained in its initial motion why the information sought was not in its possession or not otherwise readily available. Neighbors United misrepresents the nature of ATXI’s requests, for example, by characterizing it simply as a request for names and addresses (Data Request 4) while the actual dispute is whether Neighbors United’s members should be required to provide tax parcel ID numbers—information not readily available to ATXI but readily available to the members of Neighbors United.

9. Similarly, Neighbors United suggests that ATXI has equally available to it statements that members of Neighbors United may assert are ATXI admissions to be used against ATXI. ATXI has no way of knowing, however, which statements that Neighbors United

members claim to have heard and/or that Neighbors United may claim constitute admissions. Moreover, whether Neighbors United was incorporated or not has no bearing whatsoever on what its current members claim to be admissions made by employees or agents of ATXI. In sum, the very nature of Neighbors United's repudiation of its duty as a litigant to respond to discovery is seen in its refusal to provide information that is routinely asked for in most pattern civil interrogatories that circuit courts in this state deem proper. The Commission should overrule these objections.

### **Request for Prompt Ruling**

10. Neighbors United has had nearly two months to provide information in response to ATXI's data requests, with ATXI's requests first being provided to Neighbors United on August 24, 2015. After notifying of a need for nearly 10 days of additional time to respond, Neighbors United provided very limited responses to some of the data requests on September 22, 2015, and promised to provide some limited supplemental information—which was not provided until nearly three weeks later, on October 12, 2015.

11. The Company has not been similarly dilatory. On September 15, 2015, the Company wrote Neighbors United's counsel outlining the invalidity of Neighbor United's objections, and agreeing to narrow one request and withdraw another. A few days later, the Company's counsel conferred with Neighbor's United's counsel (to no avail) and on September 23, 2015, a conference with the Regulatory Law Judge was held. The Motion to Compel was filed just one week later, and has been pending for 17 days. In the meantime, the Company timely responded (even though the time for response had been shortened as agreed upon in the procedural schedule) to all of the non-objectionable data requests that Neighbors United served on the Company (notably, although the questions Neighbors United posed could have been asked

at any time since Neighbors United sought intervention in June, Neighbors United waited until the date that the time for response dropped from 20 to 10 days to serve the data requests on the Company).

12. This Reply is being filed just two business days after Neighbors United responded to the Motion to Compel (filed October 16). Showing disregard for the Commission's rules, Neighbors United's response to the Motion to Compel was filed *three days after* the deadline established by 4 CSR 240-2.080(13), and without any request by Neighbors United to file late or any attempt whatsoever to establish good cause to ignore the Commission's rules.<sup>9</sup>

13. The procedural schedule in this case dictates that ATXI must file its surrebuttal testimony on November 16, 2015—just 27 days from the date of this filing. Had ATXI data requests been answered on time under the Commission's rules, the time period between receipt of the information and surrebuttal testimony would have been 64 days (or 57 days, even if fully answered within the additional time Neighbors United said it needed). Because the information sought by ATXI's data requests to Neighbors United is information ATXI believes is necessary to properly prepare surrebuttal testimony, it is critically important that the Commission take up ATXI's motion to compel at the agenda session on October 22, 2015, and that it order Neighbors United to provide complete responses to ATXI's data requests within 10 days of the agenda session so that ATXI can attempt to use such information for the preparation of its surrebuttal testimony.

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<sup>9</sup> One possible explanation for Neighbors United's tardiness is that it was busy obtaining the information it needed from 47 people (at least 35 members) for the affidavits attached to its October 13, 2015 Motion to Dismiss, which also could have been filed at any time since it sought intervention.



WHEREFORE, ATXI respectfully requests that the Commission enter its order compelling Neighbors United to provide full and complete responses to Data Request Nos. 2, 4, 5, 8, 9, 10, 11, 12, and 13 no later than November 2, 2015.<sup>10</sup>

Respectfully submitted,

/s/ James B. Lowery

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<sup>10</sup> The tenth day would run on Sunday, November 1, 2015.

**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 20<sup>th</sup> day of October, 2015, to counsel for all parties of record.

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

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