

**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.)

REPLY BRIEF OF NEIGHBORS UNITED

HERNANDEZ LAW FIRM, LLC

Jennifer Hernandez, MO Bar No. 59814
1802 Sun Valley Drive
Jefferson City, Missouri 65109
Phone: 573-616-1486
Fax: 573-342-4962
E-Mail: jennifer@hernandezlegal.com

ATTORNEY FOR NEIGHBORS
UNITED AGAINST AMEREN'S POWER
LINE

March 18, 2016

TABLE OF CONTENTS

(1) Response to ATXI on The Missouri Constitutional Right To Farm.....3

(2) Response to ATXI and MISO on the Purported Need for the Mark Twain
Transmission Line.....5

(3) Correction to Citation in Neighbors United’s Initial Brief.....13

COMES NOW Neighbors United Against Ameren's Power Line (Neighbors United), by and through the undersigned counsel, and for its Reply Brief respectfully states as follows:

(1) Response to ATXI on The Missouri Constitutional Right To Farm

ATXI discusses the Constitutional Right to Farm only briefly in its Initial Brief. The little discussion that is included focuses on a recent Missouri Supreme Court decision in *State of Missouri v. Clay*,¹ states that it is applicable in this case and uses it to support a Commission limitation to the Right to Farm. However, ATXI grossly misapplies the Court's conclusion as supportive of its position in this case. In fact, *Clay* supports Neighbors United's position that the Right to Farm is absolute in this case.

The Court in *Clay* considered the right to bear arms as expressed in Article I Section 23 of the Missouri Constitution. This amendment (Amendment 5) was also on the ballot with the Missouri Right-to-Farm (Amendment 1) on August 5, 2014. Amendment 5 to the Missouri Constitution provides:

That the right of every citizen to keep and bear arms **ammunition, and accessories typical to the normal function of such arms**, in defense of his home, person, **family** and property, or when lawfully summoned in aid of the civil power, shall not be questioned; ~~but this shall not justify the wearing of concealed weapons.~~ **The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.**

Art. I, sec. 23 (new language in bold italics, deleted language struck through).

¹ *State of Missouri v. Clay*, Slip Op. (Mo. Banc, Feb. 9, 2016) (Case No. SC 94954).

Amendment 5 actually contains language that allows limitations of the right to bear arms, specifically stating that Amendment 5 does not prevent the General Assembly from enacting general laws that limit the right of convicted violent felons or those adjudicated to be a danger to themselves.

Of distinct difference is the Missouri Right-to-Farm Amendment, Article 1, Section 35 of the Missouri Constitution. It 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.

The only limitation to Article 1 is any duly authorized power conferred by Article VI. Article VI delineates the powers given to local governments and nothing in Article VI limits the Right to Farm in this case.

“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.”² “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.”³ 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.”⁴

² *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).

³ *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)

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

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. While there may be a dispute as to the extent to which citizens' farming and/or ranching practices will be impacted, no party to this case disputes that some amount of farm and/or ranch property will be permanently removed from production.

The Missouri Right to Farm is a right subject only to Article VI, and until an Article III court finds limitations, if there are any, the Commission should not limit the right. Any Commission action other than dismissal would require the Commission to decide such questions and effectively order what land ATXI can seek condemnation on and build the proposed route across. 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.

(2) Response to ATXI and MISO on the Need for the Mark Twain Transmission Line

Exclusive Focus of ATXI and MISO on Transmission as the Solution

ATXI correctly identifies MISO's mission on the first page of its opening brief, and states "MISO coordinates transmission planning for its entire footprint."⁵ The MISO opening brief states "The need for the Project was determined through a deliberate, collaborative stakeholder process."⁶ Yet MISO witness Smith, while protesting that other

⁵ ATXI Initial Brief, page 1.

⁶ MISO Initial Brief, page 5.

alternatives besides a new transmission line could have been offered by any of the stakeholders in what he characterized as a robust MTEP stakeholder process, could not identify any of the consumer or environmental stakeholders when asked, could not remember the ten sectors of stakeholders involved in the MTEP process, and did not comment on whether alternatives other than a new transmission line were offered by any of the stakeholders.⁷ In this proceeding, MISO is fulfilling its transmission planning mission by advocating for the Mark Twain transmission line to the exclusion of all other possible solutions. There is no evidence in the record that any alternatives to this line were considered in the MTEP process, no matter how meritorious they might have been.

Only Relative Significance of Mark Twain Line Within Framework of MVP Projects

ATXI claims “the Project is a linchpin to producing the overall benefits for the portfolio because it is a critical component of a new 345-kV transmission path from the northern and western parts of MISO’s footprint to Missouri and continuing on to other parts of the MISO footprint, east of Missouri.”⁸ The map of MVP projects in the Staff’s initial brief shows the entire MVP portfolio.⁹ The existing 345 kV network that will tie into the Mark Twain line from north and west is not included among the MVP projects and is not being expanded, at least in the context of the MVP portfolio. The Mark Twain project is also at the southwest extreme of the portfolio of MVP projects, at the periphery of the 345 kV network. Given this reality, the “linchpin” claim is weak.

⁷ Tr. Vol. 9, p. 604, pp. 20-22; p. 614, lines 15-25; p. 615, lines 1-5.

⁸ ATXI Initial Brief, page 10.

⁹ Staff Initial Brief, page 5.

ATXI states that “without Mark Twain, the very significant benefits enabled by the Project for Missouri would not exist because there would no longer be a connection to the larger MVP portfolio in Iowa or in eastern Missouri, which would mean that the planned transmission path from the more northerly and westerly parts of MISO (e.g., North Dakota/Minnesota) to more easterly portions (e.g., Indiana) would not be completed, in contravention of the fundamental design of the MVP portfolio,” and 2) that “if not built, the Mark Twain Project will fail to provide the contemplated connection to the 345-kV transmission in Iowa and beyond in MISO’s footprint, including to other MVPs in the north and west part of MISO, and to the new Maywood switching station in Marion County, Missouri, which is included in the Missouri portion of the Illinois Rivers Project already approved by this Commission last summer in Case No. EA-2015-0145.”¹⁰ **ATXI fails to acknowledge with these statements that there is an existing 345 kV network that will connect Iowa and other MVPs in the north and west part of MISO to the Maywood Substation as shown in the MVP map in the Missouri PSC initial brief.**¹¹ The Commission does not have to approve the Mark Twain Transmission Project for the other projects in the MVP to connect. So the Commission should not be pressured into approving the Application by MISO, ATXI or any other party on the idea that a decision to deny this project would somehow equate to a missing puzzle piece to connect the MVP projects.

¹⁰ ATXI Initial Brief, pages. 11-12.

¹¹ Staff Initial Brief, page. 5.

Solar Versus Wind Cost Comparisons

MISO claims that Neighbors United's witness, Mr. Powers, is a solar power advocate rather than an unbiased energy evaluator.¹² This is not true—in fact, the bias lies with the accuser MISO, which did not consider any alternative other than wind power to meet RPS needs in its MTEP process. ATXI inexplicably attacks NU for using information favorable to the arguments about the cost of solar and wind power.¹³ It begs the question, what party did not make use of information to support its position in this case? What should matter to the Commission are current solar contract prices, not outdated solar capital equipment assumptions cited by ATXI and MISO.¹⁴ The current solar contract prices are at or below wind power contract prices, and unlike wind power, solar power is delivered at the right time of day when demand is highest.¹⁵ ATXI accuses NU of cherry-picking data to make its case for solar pricing.¹⁶ Use of actual published 2015 solar contract prices is not cherry-picking data. It is the market reality of the cost of solar power in 2015. ATXI's brief expends pages on competing capital cost figures for wind and solar power,¹⁷ but is silent on the real issue, which is actual 2015 contract prices for solar power and wind power.

ATXI gives one example of a projected 2020 cost of wind power of \$73.60/MWh without tax incentives.¹⁸ Mr. Powers references actual 2015 solar contract prices of less

¹² MISO Initial Brief, page 10.

¹³ ATXI Initial Brief, page 13.

¹⁴ ATXI Initial Brief, pages 11-12. MISO Initial Brief, page 10.

¹⁵ Tr. Vol. 7, page 436, lines 9-23.

¹⁶ ATXI Initial Brief, page 16.

¹⁷ *Id.* at pages 13-18.

¹⁸ *Id.* at page 18.

than \$55/MWh in California.¹⁹ However, the lowest solar contract prices referenced by Mr. Powers are Texas contracts. Austin Energy (Austin, Texas) signed solar contracts for less than \$50/MWh in 2014 and received solar contract bids for less than \$40/MWh in 2015.²⁰ ATXI is also incorrect in implying that Austin, Texas is in West Texas.²¹ It is in Central Texas.

ATXI cites to Mr. Powers as the source for ATXI's estimate that about 4,100 acres of land would be required to produce 681 MW of solar power (based on Mr. Powers' estimate of 60 acres of land needed for each 10 MW of utility-scale solar generation).²² It is important to clarify that Mr. Powers' testimony is that the solar can be preferentially located on rooftops and parking lots, and does not by definition require open land for deployment.²³

Finally, ATXI states that “. . . the baseless claim that wind will not develop in this area (Northeast MO) because it hasn't done so yet and because it is not cost-competitive is just that, baseless.”²⁴ Mr. Powers did not claim that the 300 MW Shuteye Creek wind project was not cost-competitive at the time it was proposed in 2007. The only assertion that was made by Mr. Powers is that Ameren Missouri displayed no interest in contracting for this wind power during the time the wind project developer was seeking a contract.²⁵

¹⁹ Exhibit 42, page 38, lines 12-18.

²⁰ *Id.* at page 40, lines 1-14.

²¹ ATXI Initial Brief, page 18, footnote 56.

²² *Id.* at page 18, footnote 58.

²³ Exhibit 42, page 43, lines 15-17.

²⁴ ATXI Initial Brief, page 21.

²⁵ Exhibit 42, page 12, lines 12-20; page 13, lines 1-6.

Reason for No Wind Development in NE MO – Lack of Utility Interest, Not Lack of Transmission Capacity

ATXI states “Despite Mr. Powers’ claims that minimal effort would be needed to connect some amount of wind generation (he pointed to a 300 MW project examined more than seven years ago) to the existing 161-kV system in the area, no such projects (in the absence of a 345-kV line) have actually moved forward over the past several years.”²⁶ However, as Mr. Powers’ rebuttal testimony provides, there was a study of the existing 161 kV system and it was determined to be fully capable of delivering 300 MW of wind power with approximately \$11 million worth of transmission system upgrades at no cost to Missouri ratepayers.²⁷ The wind developer, not Missouri ratepayers, would pay for these upgrades.²⁸ In this case for the Mark Twain Transmission Project, Missouri ratepayers will pay 8 percent of the \$224 million cost of the project, or approximately \$18 million, whether or not any wind power is ever built in the Adair Wind Zone.²⁹ Lack of transmission capacity was not a constraint to this 300 MW project moving forward. Lack of interest among Missouri utilities, including Ameren MO, in signing a contract for this wind power was the reason the project did not move forward.³⁰

Material Misrepresentations in this Proceeding by ATXI and MISO

ATXI states “With regard to the old wind project to which Mr. Powers points which he claims proves wind won’t develop, as Mr. Smith testified, the interconnection study done on that project only concluded that if it were built a mere 60 MW of wind from it could actually be delivered using the existing 161-kV system, even if it could be

²⁶ ATXI Initial Brief, pages 18-19.

²⁷ Exhibit 42, page 11, lines 5-9.

²⁸ *Id.* at page 12, lines 14-20; page 13, lines 1-2.

²⁹ Exhibit 42, page 12, lines 6-11.

³⁰ *Id.* at page 13, lines 3-6.

“connected” and even with the upgrades that were identified. It remains unknown whether that deterred the wind developer, but it’s logical to assume that it did.”³¹ This is an example of ATXI and MISO misrepresenting information that is not favorable to them. Excerpts from the MISO interconnection study on this wind project are included as Schedule PE-10 to Mr. Powers’ rebuttal testimony. One excerpt is a section of the executive summary of the interconnection study, which unambiguously states all 300 MW of the wind project’s capacity will be deliverable at a cost of \$10.9 million in transmission system upgrades that will be paid for by the wind developer:

Project G578 proposes the addition of 300 MW of wind generation to connect to the Adair Substation, in Adair County, Missouri, at 161 kV. . . . The purpose of the study is to evaluate the impacts of the interconnection of the study generator when operating at 100% of their requested output on the transmission system. The generator is required to mitigate all injection, stability, and short circuit constraints for the Energy Resource Interconnection Service (ERIS) The Deliverability Analysis found the G578 study generator to be 0 (zero) MW deliverable. This constraint occurs when monitoring Thomas Hill - Moberly Tap 161 kV for the loss of Thomas Hill - McCredie 345 kV. To fix this constraint and make G578 fully deliverable, a solution is provided by AECl at an estimated cost of \$10.9M.³²

Yet at the hearing, ATXI questioned MISO witness Mr. Smith on a step in the MISO interconnection evaluation process for this wind project that is described toward the end of the interconnection study. Mr. Lowery did not introduce this section of the interconnection study as an exhibit at the hearing.

Illogically, as a result of Mr. Lowery cherry-picking an intermediate step in the MISO interconnection evaluation process and then having MISO witness Smith identify it incorrectly as the final conclusion, ATXI and MISO collectively and erroneously assert

³¹ ATXI Initial Brief, page 19.

³² Exhibit 42, Schedule PE-10, pages 4-5.

that only a “mere 60 MW of wind from it could actually be delivered using the existing 161-kV system,” when the executive summary of the same interconnection study - that is in the record of this proceeding as Schedule PE-10 - states that all 300 MW of the wind project’s capacity can be delivered with \$10.9 million in transmission system upgrades to the existing 161 kV system.

Reclassification of Category C Events to Category D Events that do Not Require Mitigation

ATXI contends “...there is no reason to believe that the cooperatives would support a reclassification” of Category C events to Category D events that do not require mitigation.³³ The Northeast MO 161 kV system would not be less reliable following a reclassification of the [REDACTED] reliability events from Category C to Category D. ATXI could not identify any of these Category C events as [REDACTED] [REDACTED] to the Northeast MO 161 kV grid.³⁴ The reclassification would be an acknowledgement that the identified events are so unlikely that Ameren MO and ATXI should not be spending ratepayer money to develop the wrong solution, that being the Mark Twain transmission line, for very low probability reliability events. ATXI's assessment of the willingness of the cooperatives to accept a reclassification of the reliability events analyzed by ATXI rings hollow. ATXI did not support its perception on how the cooperatives feel about reclassification with any communications or other type of support from the cooperatives.

³³ ATXI Initial Brief, pages 23-24.

³⁴ Exhibit 42, Schedule PE-13, page 3; Tr. Vol. 6, page 185, lines 15-21.

(3) Correction to Citation in Initial Brief

Neighbors United provided an incorrect citation in its Initial Brief for footnote 102. The citation for this footnote should be: Exhibit 42, Schedule PE-10; Exhibit 42, page 10, lines 14-18; page 11, lines 5-9.

WHEREFORE, Neighbors United submits this Reply Brief and recommends the Commission deny ATXI's Application for the reasons contained herein and in its Initial Post Hearing Brief.

Respectfully submitted,

HERNANDEZ LAW FIRM, LLC

By: **/s/ Jennifer Hernandez**

Jennifer Hernandez, MO Bar No. 59814

1802 Sun Valley Drive

Jefferson City, Missouri 65109

Phone: 573-616-1486

Fax: 573-342-4962

E-Mail: jennifer@hernandezlegal.com

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 18th day of March 2016.

/s/ Jennifer Hernandez

Jennifer Hernandez