

**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. )

**POSITION STATEMENT OF NEIGHBORS UNITED**

**COMES NOW** Neighbors United Against Ameren’s Power Line (Neighbors United), by and through the undersigned counsel, and for its Statement of Position respectfully states as follows:

1. *Does the Commission possess authority to approve ATXI’s application?*

Respectfully, No. ATXI asks the Commission to grant it a Certificate of Convenience and Necessity (CCN) to build a transmission line through approximately 378 properties, with the majority if not all, engaged in farming and/or ranching practices. ATXI makes its request despite the Missouri Right-to-Farm Constitutional Amendment 1 passed by voters on August 5, 2014. Article 1 of the Missouri Constitution contains the Bill of Rights. 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.

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 presents issues that require constitutional interpretation and application. Such questions are beyond the authority of administrative agencies and any Commission action other than dismissal would require the Commission to decide such questions.

Further, 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[.]

And 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.

ATXI, by its own admissions made in testimony in this case, admissions made in Case No. EA-2015-0145, as well as admissions made to the county commissions themselves acknowledges that approval from the county commissions is required as part of this case. The Commission may not grant ATXI the authority it seeks until the required approvals from the county commissions are received and submitted to this Commission for consideration.

2. *Does the evidence establish that the Mark Twain transmission line project, as described in ATXI's application in this docket, and for which ATXI is seeking a certificate of convenience and necessity ("CCN"), is "necessary or convenient for the public service within the meaning of that phrase in section 393.170, RSMo?*

No. The Commission has traditionally used the Tartan criteria to determine whether a project is "necessary or convenient for the public service within the meaning of Section 393.170, RSMo. It is ATXI's burden to present evidence showing that all five factors are met with the Mark Twain Transmission Project (MTTP). The five Tartan criteria are: 1) there must be a need for the service; 2) the applicant must be qualified to provide the proposed service; 3) the applicant must have the financial ability to provide the service; 4) The applicant's proposal must be economically feasible; and 5) the service must promote the public interest. It is the position of Neighbors United that ATXI has not met all five of the Tartan criteria and the Commission should not approve the Application.

*There must be a need for the service*

ATXI inappropriately dropped its evaluation of alternatives to the MTTP when the MISO Board of Directors approved the MVP Portfolio containing the MTTP. These other alternatives neither require a costly investment in a new 345 kV line nor interfere with landowner rights as the MTTP does. Further, Ameren Missouri (the Missouri investor owned utility beneficiary of the MTTP) does not require the MTTP to meet its target of 400 MW of new wind power contracts by 2021. The instate incentive in the Missouri Renewable Energy Standard reduces the wind target, if the wind power is located in Northeast Missouri in the Adair Wind Zone, to approximately 300 MW. MISO has determined through an interconnect study that—with modest upgrades totaling less than \$11 million that the wind developer is obligated to pay for—at least 300 MW of

wind power can be accommodated at the Adair Substation. Ameren Missouri also has the ability to buy additional renewable energy credits to meet its 2020 targets. ATXI ignores the current economic competitiveness of solar power with wind power, as well as the better match of solar output with summer peak demand, in its economic analysis of the benefits of the proposed 345 kV line. Potential benefits to other states should not be a rationale used by the Commission to support a finding that there is a need for the service in Missouri, especially when considering the economic impact of running the MTTP through operational farms in Northeast Missouri.

Neighbors United also believes the MTTP is not necessary to solve alleged reliability concerns and will address those arguments that contain sensitive infrastructure information at the evidentiary hearing.

In sum, there are viable and cost-effective alternatives to constructing the proposed ATXI 345 kV line that achieve the project objectives described in the ATXI application while avoiding the economic and environmental impacts that would be caused by the project.

*The applicant must be qualified to provide the proposed service*

Neighbors United asserts that ATXI has failed to show that it is a qualified entity to provide the proposed service. Owning the transmission line will require ongoing relationships with the landowners that ATXI proposes to acquire easements from. If the MTTP is approved, normal and unexpected maintenance requirements will require ATXI to enter upon the easements acquired from the landowners. From the onset of this project, ATXI has failed to build a working relationship with the landowners that this project will require them to continually work with. ATXI held three open houses

in the fall of 2014 to allow landowners to ask questions about the project. Before landowners could enter the public meetings to inquire of the project, they were required to sign a "Sign-In Sheet" or they were not allowed to enter to inquire about how the project would impact their land. The "Sign-In Sheet" contained a disclaimer that stated an individual's signature on the "Sign-In Sheet" was their release and that it allowed ATXI to use the individual's image and statements made at the public meeting for any purpose in the future. Also, a reporter with WGEM provided a report on the news station's website as well as the 10 p.m. news after the October 28, 2014 Open House. The news report included statements made by ATXI's former Director of Stakeholder Relations, Peggy Ladd. The report provided: "I think if the route is on the property they're a little more concerned, and if not, they've just breathed a sigh of relief,' Ladd said." The news also reported Ladd stating "*...the project is moving ahead either way, and it's up to the residents to jump on board or jump ship.*" Statements as such are hardly supportive of the idea that the utility can work cooperatively with landowners and consider their interests in their decision-making. Chairman Hall put ATXI on notice at the local public hearing in Kirksville that he intended to inquire about customers' concerns at the evidentiary hearing. Neighbors United encourages the Chairman to do so.

Besides inappropriate statements, ATXI has also failed to identify and notify all landowners along the proposed route. While the Commission has recently stated that there is no statutory requirement to do so, ATXI in the Surrebuttal Testimony of Ms. Borkowski at page 4, footnote 1 states "All landowners whose property is impacted by the final route described and depicted in ATXI witness Chris Wood's direct testimony

have been notified in writing.” A recent Notice of Extra Record Communication identifies one individual that has stated he did not receive notice that the final route was to cross his property, and Neighbors United has identified other non-members that ATXI failed to notify. These individuals were identified by group members going through each map provided as part of discovery requests. It is important to note that ATXI alleged it could not identify the actual landowners without extensive title work. Neighbors United spent 5 days with member volunteers in the Assessor’s Office in each county to identify landowners. While there may be no statutory requirement, the idea of fair and honest dealing suggests a utility would provide notice to the affected landowners that they intend to seek either a voluntary easement or begin condemnation proceedings to build a transmission line over their property. ATXI’s failure to provide basic notice should cause one to wonder what other misrepresentations are contained in the Application? And can ATXI engage in fair dealings with the citizens of Missouri if the Commission approves this Application. Statements made by ATXI that this project “is going to go through no matter what” should raise concerns with the Commission.

*The applicant must have the financial ability to provide the service*

Neighbors United does not take a position on this issue at this time and reserves the right to brief the issue.

*The applicant’s proposal must be economically feasible*

In short, ATXI has failed to show that the MTTP project is an economic project standing on its own outside the portfolio. ATXI has used MISO studies to suggest the economic feasibility of the project—however MISO admits that it did not conduct independent cost benefit studies for the specific Missouri Mark Twain Transmission

Project (MTTP), which is the specific project the Commission is being asked to approve, not the entire MVP portfolio. Since the Commission is being asked to specifically approve the MTTP, it should require evidence of whether the specific project's economic benefits outweigh the costs, and without it, the Commission cannot determine whether the project is in the economic interest of Missouri citizens. Without it the Commission lacks substantial and competent evidence to support such a finding. Further, ATXI witness Ms. Borkowski in her surrebuttal testimony at page 8 states that "...it is true that one cannot quantify the precise retail rate impact based upon such analyses..." provided by MISO. The Commission should deny a project that cannot be supported by its own cost/benefit analysis. The Commission makes decisions for Missouri ratepayers, not a multi-state region as a whole.

*The service must promote the public interest*

As discussed in question one above, the Missouri Constitution states that Agriculture "...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." ATXI seeks to build the MTTP through approximately 378 properties, majority if not all, are engaged in farming and/or ranching practices. 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. While the exact extent of intrusion is a point of argument, even ATXI admits that some land will be

removed from production. As ATXI's actions infringe on a constitutional right, the service cannot promote the public interest.

Further, ATXI proposes to build the MTTP through environmentally sensitive areas where several endangered species are known to reside. ATXI failed to fully consult with the United States Fish and Wildlife Service (FWS) prior to submitting their Application to the Commission containing a final route. The Missouri Department of Conservation also expressed concerns about ATXI's planning. For a project that is based on bringing renewable energy into the region and is touted as supporting "GREEN" initiatives, it is quite ironic that the MTTP will disturb environmentally sensitive areas including large maternal colonies of bats listed as endangered species by the FWS. Neighbors United recommends the Commission order ATXI to further consult with FWS and the Missouri Department of Conservation prior to granting the certificate in an effort to minimize environmental impact. The Commission has the ability through this order to instill the need for appropriate planning prior to case filings. If authority is granted prior to proper planning, there is a potential for running roughshod through the process because the applicant already has what they want—in this case—the ability to build the MTTP.

Another great concern of Neighbors United is ATXI's decision to build the MTTP through Amish and Mennonite communities. Again—another great irony—the MTTP will be built through communities that do not even use power. The Amish and Mennonites religious beliefs keep them from actively opposing the MTTP, a fact that only benefits ATXI. Neighbors United argues that building across these communities is against the public interest as the project goes against their very way of life.



Finally, as discussed above for the economic prong, there is no specific cost/benefit analysis for the MTTP to determine whether this project is truly in the public interest for Missouri.

3. *Do §§ 393.170 and 229.100, RSMo., require that before the Commission can lawfully issue the requested CCN the evidence must show the Commission that where the proposed Mark Twain transmission line project will cross public roads and highways in that county ATXI has received the consent of each county to cross them? If so, does the evidence establish that ATXI has made that showing?*

As provided above, Commission Rule 4 CSR 240-3.105(1)(D)1. provides:

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4. *If the Commission decides to grant the CCN, what conditions, if any, should the Commission impose?*

Neighbors United asserts that no condition will completely alleviate the impacts this project will have on landowners. And in no way should this discussion be viewed as a waiver of Neighbors United's argument that this project violates the Missouri Constitution and the protections it affords farmers and ranchers. But if the Commission grants ATXI's Application, Neighbors United would ask that the conditions set forth in Dan Beck's testimony be ordered, especially the condition "That the certificate is limited to the construction of this line in the location specified in the application, and as represented to landowners on the aerial photos provided by ATXI, unless a written agreement from the landowner is obtained, or ATXI gets a variance from the Commission for a particular property." The farmers and ranchers that are subject to this proposed line are making decisions about their livelihood everyday. They are making decisions such as where to grow crops, where to build barns and overall where to make investments in their property and livelihood. For these reasons, if the Commission approves the line it should do so as represented in the Application. The landowners are going to experience impact just by the line crossing their property. They should not have to wonder whether the decisions they have to make today regarding their farm will be negated by ATXI down the road without an opportunity to defend their investment.

**WHEREFORE**, Neighbors United submits this Statement of Position and recommends the Commission deny ATXI's Application for the reasons contained herein.

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 20<sup>th</sup> day of January 2016.

**/s/ Jennifer Hernandez**  
Jennifer Hernandez