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, 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.[1]	)	File No. EA-2015-0146

ATXI'S RESPONSE IN OPPOSITION TO NEIGHBORS UNITED'S MOTION FOR SANCTIONS

COMES NOW Ameren Transmission Company of Illinois ("Company" or "ATXI"), and in compliance with the Commission's January 19, 2016 *Order Directing Filing*, hereby responds in opposition to the above-referenced motion for sanctions filed on January 18, 2016 by Neighbors United (the "Neighbors") and for its response, states as follows:

1. For the second time[2], the Neighbors seek the drastic remedy of dismissing the Company's Application in this case entirely, this time claiming a failure on the Company's part to comply with discovery. Their claimed bases: first, that the Company has not fully responded to five data request ("DR") responses dealing with elements of compensation that may or may not apply arising from easements to be obtained on the project; second, that certain e-mails are missing pages.

[1] 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.
[2] The Neighbors' first attempt to obtain dismissal was to claim that any impact by any type of utility infrastructure whatsoever on land that is used for farming or ranching meant that the infrastructure could not be built without the consent of the farmer or rancher, and that this necessitated dismissal because the Commission is incapable (and not allowed) to apply a provision of the Missouri Constitution. The Commission properly rejected the Neighbors' efforts.

2. We address the second issue first, because it has already been fully resolved. After receiving the Neighbors' motion, the Company realized that through inadvertence some of the e-mails produced on January 18 as required by the Commission's January 15 *Order Regarding Motion to Compel* were missing pages. Those pages were provided at approximately 2:20 p.m. yesterday – less than a day after the original supplemental response was due. The reason the pages were missing is described in the supplemental DR response that accompanies those pages, which is reproduced here:

> Supplemental Response 2:
>
> > In order to access certain e-mail communications between ATXI and the Fish and Wildlife Service it was necessary to retrieve the e-mails from the e-mail archive system after receipt of the Commission's order regarding the motion to compel. I retrieved the e-mails, printed them and provided them with my initial supplemental response. However, I did not realize that when printing archived e-mails the entire e-mail does not print unless I click to open the e-mail entirely. Upon receipt of Neighbors United's January 19 filing, I examined the retrieved e-mails, realized they had not been printed in their entirety, and printed them in their entirety. They are attached.

The Neighbors have not been prejudiced by this short delay, and this honest mistake certainly does not warrant dismissal of this case. This would be true regardless, but it is particularly true since the subject matter of the DR at issue relates to environmentally-related requirements with which the Company (like any other constructor of a transmission line or of many other types of improvements) will have to comply, and that are within the expertise of and are administered by agencies other than this Commission. The Neighbors attempt to make much of these issues, but they are peripheral to the determination this Commission is charged with making. *See, e.g., State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 562 S.W.2d 688, 698 n.18 (Mo. App. E.D. 1978) (noting that the "considerations of the Commission do not attempt to protect the citizens of Missouri against radiation hazards," but instead are more properly directed at serving the energy needs of the public); *In the Matter of the Application of Union Electric Co., d/b/a Ameren*

Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Utility Waste Landfill and Related Facilities At its Labadie Energy Center, (File No. EA-2012-0281) Report and Order at 21 ("Missouri state law does not give this Commission primary responsibility to address environmental concerns or to enforce environmental laws. Instead, the General Assembly has assigned that duty to MDNR.").

Precisely the same principles apply here. This case is not about what ATXI may have to do to be sure it complies with environmental laws; it's about the needs and benefits of a transmission line proposed as an improvement to the transmission system in the region, including in Missouri.

3. With respect to the claim that the supplemental responses to DR Nos. 4-7, 4-9, 4-11, 4-14 and 4-16 are not responsive, the Neighbors confuse receiving DR responses that contain an answer they do not like, with receiving unresponsive responses. The Company has provided testimony that explains compensation of landowners arising from the acquisition of easements. For example, DR No. 4-7 deals with irrigation. Mr. Brown's testimony addresses damages to be settled arising from the easement negotiations, indicating in regard to irrigation that if "after the engineering review and mitigation efforts, a conflict between a field which uses center pivot irrigation and ATXI's transmission line is confirmed but cannot be resolved, the issue will be factored into the easement compensation offer and the negotiations between our department and the affected landowner." The DR in question essentially asks what will happen if the "currently used" system is incompatible. The testimony to which the response refers answers the question: the Company will seek to mitigate (i.e., engineer around the incompatibility problem) and if it can't, that incompatibility *will be factored into the easement compensation.* The Company can't state at this moment "how" compensation for a given situation will be calculated, because it depends on the

situation. And if the Neighbors desire to explore the issue Mr. Brown will appear and be subject to cross-examination at the hearings next week. The same thing is true of the other DR responses about which the Neighbors complain. The Company does not have to restate what its testimony already says to answer a DR just because the Neighbors chose to send a DR.

4. Moreover, what exactly does this kerfuffle have to do with the Commission's decision in this case? As the Commission recognizes, the Neighbors fail to "distinguish between the legal significance of granting a CCN based upon a determination that the proposed project is in the public interest and the taking of property through eminent domain proceedings. The former is within the purview of the Commission, while the latter is within the exclusive jurisdiction of Article III courts."[3] If ATXI isn't paying easement compensation it is required to pay, or if it owes damages, then the courts are the proper place to seek redress. The Commission is not a court, and it cannot require that any particular compensation be paid or otherwise award monetary damages. The Commission has recognized in other CCN cases that it is condemnation law, and not its proceedings, that determine compensation arising from the acquisition of easements. *See, e.g., In re: Union Elec. Co.*, 229 P.U.R.4th 148 at *7 (File No. EO-2002-351 Report & Order) ("There is also no reason for the *Commission* to assume that the condemnation laws will not provide an adequate remedy for the harm created by the taking of these easements.").

[3] *Order Regarding Motion to Dismiss,* at p. 4 [EFIS Item No. 75].

5. The Neighbors' latest attempt to avoid a decision on the merits or otherwise delay this case is truly an instance of making a mountain out of a mole hill. The Neighbors' motion most certainly does not establish the justification required to entirely dismiss this case.[4]

WHEREFORE, ATXI prays for an order of the Commission denying the Neighbors' Motion for Sanctions and alternative request to compel additional responses.

Respectfully submitted,
/s/ James B. Lowery

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[4] [D]ismissal of an action [arising from a claimed failure relating to discovery] should be ordered 'only in extreme situations showing 'a clear record of delay or contumacious conduct' by a party'". *See, e.g., Trotter v. Distler*, 260 S.W. 3d 913, 916 (Mo. App. E.D. 2008) (*quoting Foster v. Kohn*, 661 S.W.2d 628, 632 (Mo. App. E.D. 1983)).

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response In Opposition to Neighbors United's Motion for Sanctions has been e-mailed, this 20th day of January, 2016, to counsel for all parties of record.

/s/ James B. Lowery

An Attorney for Ameren Transmission Company of Illinois