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

RESPONSE OF AMEREN TRANSMISSION COMPANY OF ILLINOIS TO APPLICATION FOR REHEARING AND REQUEST FOR CLARIFICATION FILED BY NEIGHBORS UNITED

COMES NOW Ameren Transmission Company of Illinois (ATXI) and, for its response to *Neighbors United's Application for Rehearing and Request for Clarification of the Commission's April 27 Report and Order* (Neighbors' Application), states as follows:[2]

Application for Rehearing

In its Application, Neighbors United incorrectly asserts that the granting of a CCN by the Commission prior to the county commissions' granting of assents "essentially makes the county commissions' role in this process futile" based upon the argument that the county commissions are thereby precluded from exercising authority over the placement of the transmission line. *Neighbors' Application* at 2. In advancing this argument, Neighbors United overstates the role of the county commissions in the assent process. In the context of this case, assents are about making sure that utility infrastructure does not interfere with the use and operation of county roads. They are not about re-siting the Project or rehashing other issues that were litigated and addressed in the underlying CCN proceeding. As the Missouri Court of Appeals has told us, the

[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] ATXI will not address all of Neighbors United's arguments (e.g., the repetition of its "right-to-farm" argument), having fully addressed those arguments in earlier filings, but will address two new arguments raised by Neighbors United in its Application.

assent referenced in § 229.100, RSMo. is nothing "more than local permission to use the public roads and right of ways in a manner not available to or exercised by the ordinary citizen." *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989). Assents have nothing to do with siting authority over ATXI's transmission line, and the Commission's decision in this regard in no way infringes upon the jurisdiction of any county commission.

Explained further, the role of the county commissions under § 229.100 is, at most, limited to conditioning assents on reasonable road use regulations when and where necessary to prevent interference of an electric line with the use and operation of county roads. And on this topic, it is important to remember that this Project will have no structures in the road rights-of-way at all, but will simply overhang roads at a height that meets or exceeds all National Electric Safety Code requirements. Moreover, if Neighbors United's argument about a county commission's role was valid, county commission decisions on assents would become referendums on the siting of the transmission line that was already considered by this Commission.[3] It is *that* result which would render *this Commission's* "role in the process futile" by apparently allowing multiple county commissions to second-guess and presumably attempt to overturn the decision this Commission has already made. As ATXI suggested in its own motion for rehearing, a local municipality does not have power to invade the jurisdiction that the Legislature has afforded the Commission. *See Union Elec. Co. v. City of Crestwood*, 499 S.W.2d 480 (Mo. 1973); *Union Elec. Co v. City of Crestwood*, 562 S.W.2d 344 (Mo. 1978).[4]

[3] Neighbors United refers to line "placement" but it is obvious that Neighbors United's true intention is to re-litigate, as part of the assent processes in all five counties, the myriad of line routing issues they already brought up – and which this Commission already considered.

[4] Similarly, even where a political subdivision requires that a public utility obtain a right-of-way permit, it may deny a permit to protect the public health and safety, "provided that the authority of the political subdivision does *not* extend to those items *under the jurisdiction of the public service commission*." § 67.1836. 1(4), RSMo. (Cum. Supp. 2013) (emphasis added).

For these reasons, the argument put forth by Neighbors United in its Application—that the Commission has precluded the county commissions from exercising their lawful authority—has no basis in law and must be denied.

Request for Clarification

In its Application, Neighbors' United also incorrectly asserts that ATXI has somehow misrepresented this Commission's April 27, 2016 Report and Order by sending the affected landowners a copy of the Report and Order and by stating the fact that the Commission approved ATXI's application by a vote of 5-0. *Neighbors' Application* at 3. This assertion is incorrect and internally contradictory. As Neighbors United acknowledges, ATXI provided a copy of the entire Report and Order to each landowner in an effort to promote transparency and to avoid the thing about which Neighbor's United now complains – an accusation that ATXI is somehow twisting the Commission's decision. What better mechanism to promote an objective understanding of the order than the order itself?

Furthermore, Neighbors United points to no specific factual misrepresentation in ATXI's May 20, 2016 letter to landowners;[5] instead, it argues that the letter "misleads the landowners to believe the Commission granted the CCN and that it is now effective." *Neighbors' Application* at 3. It is certainly correct for ATXI to state that the Commission approved ATXI's application "by a vote of 5-0" because all five Commissioners in fact *did* vote in favor of the order. At no place in the letter does ATXI tell landowners that the CCN is "now effective." Rather, the letter expresses (truthfully) ATXI's interest in meeting with property owners to answer questions about the Project and to notify these property owners of ATXI's intent to begin surveying on public rights-of-way and "on private property where ATXI has received signed rights of entry." *Neighbors' Application* at *Attachment A*. None of these activities even require the assent of a

[5] The May 20, 2016 Letter is *Attachment A* to *Neighbors' Application*.

county commission or specific approval from the Commission. *See, e.g., State ex rel. Rhodes v. Crouch*, 621 S.W.2d 47 (Mo. *banc* 1981) (standing for the proposition that a utility has a pre-condemnation right of survey and holding that a rural electric cooperative has right to enter private property for purposes of condemnation survey, notwithstanding that the legislature has not specified this right for rural electric cooperatives).[6]

Neighbors United's request is simply improper. Because Neighbors United asks the Commission to "clarify" ATXI's rights and duties that exist independently at law, it is asking this Commission to wade into areas over which it has no authority. As the Commission recognized when it denied Neighbors United's *Motion to Dismiss* this case, the scope of ATXI's pre-condemnation rights (and this would certainly also be true of ATXI's and landowners' rights to engage in free speech and to negotiate contracts) are matters outside the scope of a CCN case. Order Regarding Motion to Dismiss at 4 (where the Commission made clear that Neighbors United's right-to-farm arguments improperly invited the Commission to wade into condemnation-related matters that would have to be resolved by an Article III court). Similarly, Neighbors United's "clarification" request effectively and improperly asks this Commission to give some kind of advisory opinion on matters outside its jurisdiction or expertise. *See, e.g.*, *State ex rel. Mo. Pipeline Co., L.L.C. v. Pub. Serv. Comm'n*, 307 S.W.3d 162, 179 (Mo. App. W.D. 2009) (noting that a reviewing court will not substitute its judgment for that of the Commission on issues *within the realm of the agency's expertise*). Finally, it is no little irony that Neighbors United—having bitterly complained to this Commission that ATXI failed to

[6] ATXI's pre-condemnation right to survey arose at least as early as June 2015, when this Commission found that it was a public utility in File No. EA-2015-0145.

communicate with affected landowners—now complains that ATXI *is* communicating with landowners.[7] Such is ATXI's obligation and right.

For these reasons, "clarification" is neither needed nor appropriate. Accordingly, Neighbors United's request for clarification must be denied.

WHEREFORE, ATXI requests the Commission to enter its order denying the relief requested in the Neighbors' Application.

Respectfully submitted,

/s/ James B. Lowery

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[7] Of course, the record in this case shows that ATXI extensively communicated with landowners all along.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been e-mailed, this 2nd day of June, 2016, to counsel for all parties of record.

/s/ James B. Lowery
An Attorney for Ameren Transmission Company of Illinois