

**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 an Associated Substation )  
Near Kirksville, Missouri )

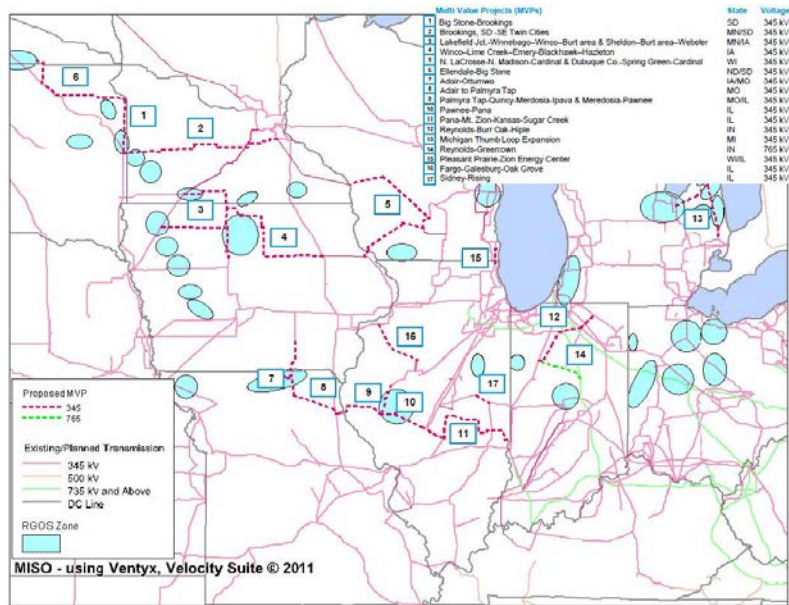
**Case No. EA-2015-0146**

**STAFF’S POSITIONS**

Staff’s positions on the listed issues follow:

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

Staff’s position: Yes. As the following demonstrates the Mark Twain project is but a subset of a number of transmission improvements MISO collectively approved in 2011 as multi-value projects—projects that provide regional public policy, reliability and/or economic benefits—under Federal Energy Regulatory Commission authority (MISO MTEP 2011, p. 7, Fig. 1-3). The Mark Twain project is MVP 8 and the part of MVP 7 sited in Missouri (the rest of MVP 7 is in Iowa). While the Mark Twain project is part of a larger MISO regional plan, it is sited in Missouri and, to Staff’s knowledge and as the Commission opined in its August 1, 2015, *Revised Order Granting Certificate of Convenience and Necessity* to ATXI for that portion of the Illinois Rivers MISO MVP project in Missouri (part of MTEP 2011 MVP 9) and argues in its respondent’s brief filed January 4, 2016, in the Missouri Western District Court of Appeals in Case No. WD78939 on review of that report and order, to date, the federal government has not preempted state permitting or siting of transmission facilities.



In the past the Commission has issued CCNs for the portions of electric lines sited in Missouri that were being built specifically to move electricity in or out of Missouri to serve load. It did so in 1948 for a 110 kV line from Dunklin County, Missouri into Clay County, Arkansas,<sup>1</sup> in 1967 for a 345 kV line from the Kansas City area to the Minneapolis-St. Paul area,<sup>2</sup> in 1991 for a 345 kV Cooper-Fairport St. Joseph Interconnection to be constructed and owned by Associated Electric Cooperative, issuing, over their assertions CCNs were not needed, CCNs to both St. Joseph Light & Power Company and Kansas City Power & Light Company,<sup>3</sup> and more recently in 2014 to Transource Missouri, LLC, for the Sibley-Nebraska City 345 kV line<sup>4</sup> Similarly, it has

<sup>1</sup> *Re Arkansas-Missouri Power Company*, 1 Mo. P.S.C. (N.S.) 543 (Report and Order October 22, 1948).  
<sup>2</sup> *Re Kansas City Power & Light Company*, 13 Mo. P.S. C. (N.S.) 322 (Report and Order August 18, 1967).  
<sup>3</sup> *Re St. Joseph Light & Power Company and Kansas City Power & Light Company*, 1 Mo. P.S.C.3d 44 (Report and Order August 28, 1991).  
<sup>4</sup> *In the Matter of the Application of Transource Missouri, LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Finance, Own, Operate, and Maintain the Iatan-Nashua and Sibley-Nebraska City Electric Transmission Projects*, Case No. EA-2013-0098 (Report and Order August 7, 2013).

issued CCNs for intrastate lines for selling electricity at wholesale,<sup>5</sup> and found it had jurisdiction over a complaint that, because it did not have a CCN, Progressive Industries unlawfully was building an interstate line to transmit electricity to a municipality.<sup>6</sup>

ATXI admits in its application that it is a corporation and that “[it] is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use and a part of such transmission lines that ATXI intends to construct, own, and operate will be located in Missouri; . . . .” In pertinent part, § 386.020(15), RSMo., defines an “electrical corporation” to “include[] every corporation, . . . owning, operating, controlling or managing any electric plant . . .” and, in pertinent part, § 386.020(14), RSMo., defines “electric plant” broadly so that it “includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the . . . , transmission, . . . of electricity for light, heat or power; . . . .” As an electrical corporation that intends geographically to expand its operations in Missouri, § 393.170, RSMo., requires that ATXI obtain a certificate of convenience and necessity for that expansion **before** it undertakes it.

Additionally, ATXI is obligated not to discriminate in offering and providing transmission service over the Mark Twain project. This Commission has authority to approve ATXI’s application; however, as Staff addresses in issue 3, ATXI has not yet met a prerequisite to this Commission issuing ATXI a CCN in this case, i.e., it does not have the necessary county commission consents to cross public roads and highways.

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<sup>5</sup> *Re Union Electric Company of Missouri*, 3 Mo. P.S.C. (N.S.) 86 (*Report and Order* January 15, 1951) (Two 34.5 kV lines and 138/34.5 kV substation “for the sole purpose of selling electric energy to the City of Rolla, Missouri, . . . .” *Id.* at 94), and *Re: Union Electric Company*, 14 Mo. P.S.C. (N.S.) 147 (*Report and Order* October 2, 1968) (138 kV line to supply additional electricity at wholesale to Citizens Electric Corporation).

<sup>6</sup> *The Empire District Electric Company v. Progressive Industries, Inc.*, 13 Mo. P.S.C. 659 (*Report and Order* April 2, 1968).

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?

Staff's position: The evidence in this case will establish that, as used in § 393.170, RSMo., with appropriate conditions, the Mark Twain project is "necessary or convenient for the public service."

In evaluating whether or not the Mark Twain project is "necessary or convenient," Staff has used the Commission's "Tartan" factors. They are:

- There must be a need for the service;
- The applicant must be qualified to provide the proposed service;
- The applicant must have the financial ability to provide the service;
- The applicant's proposal must be economically feasible; and
- The service must promote the public interest.

By referring to them as the "Tartan factors," the Commission is referring to its 1994 report and order in the case, *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994), but the Commission actually first articulated these five general groupings in its report and order in *Re Intercon Gas, Inc.*, 30 Mo.P.S.C.(N.S.) 554, 561 (1991), where it developed them as summaries of what it had reviewed in earlier certificate cases. On appellate court review of the Commission's report and order in the *Intercon Gas* case, the court said:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." § 393.170.3. The term "necessity" does not mean "essential" or "absolutely indispensable," but that an additional service would be an improvement justifying its cost. [State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d at 219.](#) Additionally, what is necessary and convenient encompasses regulation of monopoly for

destructive competition, prevention of undesirable competition, and prevention of duplication of service. State ex rel. Public Water Supply Dist. No. 8 v. Public Serv. Comm'n, 600 S.W.2d 147, 154 (Mo.App.1980). The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n, 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. Id. at 392.<sup>7</sup>

Although the factor “need” is circular to the standard of “necessity,” because they include “need” and “public interest,” properly employed, the Tartan factors arrive at a correct result. Staff has so employed them. Based on its review, it is Staff’s opinion that with appropriate conditions, which it addresses under issue 4, the evidence will establish that the Mark Twain project is “necessary or convenient for the public service.”

Staff witnesses Daniel I. Beck and Shawn E. Lange address need.

Staff witness Daniel I. Beck addresses ATXI’s qualifications to provide the proposed service.

Staff witness David Murray addresses ATXI’s financial wherewithal.

Staff witness Michael Stahlman addresses the economic feasibility of the Mark Twain project.

Collectively Staff witnesses Daniel I. Beck, Shawn E. Lange, David Murray, Michael Stahlman, Sarah Kliethermes and Natelle Dietrich address the public interest.

*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?*

Staff’s position: The Mark Twain transmission line project will cross public roads and highways in Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri; therefore, because § 229.100, RSMo., **requires** the consent (“assent”) of the county commissions of those counties to cross those roads and highways, § 393.170, RSMo.,

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<sup>7</sup> *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597-98 (Mo. App. 1993).

requires that ATXI have those county consents **before** the Commission lawfully can issue ATXI a CCN for the Mark Twain transmission line project. The evidence in this case will not establish that ATXI has obtained the necessary county commission consents. But Staff sees no reason why the Commission may not issue a declaratory order now stating its views on whether or not the Mark Twain project is “necessary or convenient for the public service.”

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

Staff’s position: For convenience, Staff is responding to this question using the list of seven conditions found in Staff witness Daniel I. Beck’s rebuttal testimony at pages 16-17.

(1) With the surrebuttal testimony of its witness Davin Endorf, P.E., it is Staff’s view that ATXI has met Staff’s proposed condition that “[t]he plans and specifications for construction of the proposed Mark Twain Project that ATXI is developing shall be filed with the Commission as required by 4 CSR 240-3.105(1)(B)2”; therefore, this is no longer a condition the Commission should impose.

(2) In the rebuttal testimony of Staff witness Daniel I. Beck Staff proposed that ATXI be required to provide all required approvals 4 CSR 240-3.105(1)(D) or seek an appropriate waiver **prior to the granting of the authority sought**, as provided by 4 CSR 240-3.105(2). (Emphasis added). As indicated in its response to issue 3, county consents are both required and made prerequisites to issuing a CCN by statute; therefore, allowing variance from a rule will not give relief from those statutory requirements. In other words the legislature has made the county consents mandatory and prerequisites to issuing a CCN where, such as here, a utility will cross public roads

and highways in the county, and the Commission has no authority to issue the CCN without them. Staff also views that any CCN should be conditioned on ATXI obtaining and filing with the Commission all required permits and approvals—for examples required land disturbance permits, or required approvals of the Missouri State Highway Commission, U.S. Fish and Wildlife Service or the U.S. Environmental Protection Agency, before it begins construction of the Mark Twain project.

(3) In lieu of the condition it recommended in the rebuttal testimony of Staff witness Daniel I. Beck “[t]hat the certificate is limited to the construction of this line in the location specified in the application, and as represented to the 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 following condition is acceptable:

Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to abide by the depicted route on each of the 377 parcels identified as of the filing of its application as parcels over which an easement will be required, but will be allowed to deviate from the depicted route within one of the 377 parcels in two scenarios.

First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the depicted route on a particular parcel if ATXI and the landowner agree, e.g., upon request of the landowner and ATXI’s agreement with the request.

Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner.

With respect to any parcel other than the 377 identified parcels where ATXI determines that testing or surveys necessitate acquisition of an easement on that parcel, ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed and, if agreement is reached, may deviate from the depicted route by locating the line on the affected parcel but will notify the

Commission of the deviation and parcels affected prior to construction on that parcel. If agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the depicted route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.

(4) The Commission should impose the condition Staff recommended in the rebuttal testimony of Staff witness Daniel I. Beck, "That absent a voluntary agreement for the purchase of the property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring the owners to move or relocate from the property."

(5) In lieu of the condition it recommended in the rebuttal testimony of Staff witness Daniel I. Beck "[t]hat ATXI shall survey the transmission line location after construction and record the easement location with the Recorder of Deeds in the appropriate counties [,and] ATXI shall also file a copy of its survey in this case," the following condition is acceptable:

Prior to the commencement of construction on a parcel, ATXI will secure an easement which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel.

In addition, ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For



each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

(6) In lieu of the condition Staff recommended “[t] hat ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DB-R-2 attached to this Rebuttal Testimony [of Daniel I. Beck],” the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DBR-SR2 to the surrebuttal testimony of ATXI witness Douglas J. Brown are acceptable. A copy of that schedule is attached.

(7) The Commission should impose the condition Staff recommended in the rebuttal testimony of Staff witness Daniel I. Beck, “That ATXI shall be required to file with the Commission the annual report[s] it files with FERC.” Related to this condition, Staff agrees that if the Commission issues ATXI a CCN for the Mark Twain project, there is good cause for the Commission to relieve ATXI from the filing and reporting requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175 and 4CSR 240-3.190(1), (2) and (3)(A)-(D). The good cause being that these filing and reporting requirements are intended for ratemaking, but this Commission will have no jurisdiction over ATXI’s rates because it will have no retail customers, so the filing and reporting requirements would impose a burden on ATXI with little benefit.

Respectfully submitted,

**/s/ Nathan Williams**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 20<sup>th</sup> day of January, 2016.

**/s/ Nathan Williams**

## **ATXI's Proposed Standards and Procedures for Construction, Repair and Maintenance of Right-of-Way Mark Twain Project- Schedule DBR-SR2**

### **Applicability**

The following standards and procedures apply to construction, maintenance and repair activities occurring partially or wholly on privately owned agricultural land affected by the activities of Ameren Transmission Company of Illinois ("ATXI") as part of the Mark Twain Project ("Project"). They do not apply to such activities occurring on highway or railroad right-of-way or on other publicly owned land. ATXI will, however, adhere to the standards relating to the repair of drainage tile (identified below) regardless of where drainage tile is encountered. To the extent the standards and procedures conflict with an easement or other right-of-way agreement as between ATXI and the landowner, the language in the easement or other agreement shall govern.

All standards and procedures are subject to modification through negotiation by landowners and a designated representative of ATXI, provided such changes are negotiated in advance of any construction, maintenance or repairs.

ATXI will implement the standards and procedures to the extent that they do not conflict with the requirements of any applicable federal, state, or local rules, regulations, or other permits that apply to the Project. If any standard or procedure is held to be unenforceable, no other provision shall be affected by the holding, and the remaining standards and procedures shall remain in effect.

### **Right-of-Way Acquisition**

Every landowner from whom ATXI requires an easement or other right-of-way agreement will be contacted personally, and ATXI will negotiate with each such landowner in good faith on the terms and conditions of the easement or agreement, its location, and compensation therefor. For easements, landowners will be shown a specific, surveyed location for the easement and be provided ATXI's standard template.

ATXI's right-of-way acquisition policies and practices will not change regardless of whether ATXI does or does not yet possess a Certificate of Convenience and Necessity from the Commission.

## **Construction and Clearing**

Prior to construction, ATXI will notify all landowners in writing of the name and telephone number of ATXI's designated representative so that they may contact the designated representative with questions or concerns before, during, or after construction, including, but not limited to concerns over inferior work being performed on the landowner's property. Such notice will also advise the landowners of the expected start and end dates of construction on their properties. Landowners will be contacted in person, by phone and/or in writing at least 24 hours prior to the beginning of construction and provided a name and phone number of an Ameren Services real estate employee or contractor to contact if they have any questions or concerns. Following construction, landowners will be contacted to settle crop, land restoration, or other damages.

1. Prior to construction, ATXI's designated representative will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make ATXI aware.

2. During construction, and through the completion of clean-up of the right-of-way, ATXI's designated representative will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.

3. If trees are to be removed from privately owned land, ATXI or their representative will consult with the landowner to see if there are trees of commercial or other value to the landowner. If there are trees of commercial or other value to the landowner, ATXI will allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, such negotiation to include a reasonable period of time in advance of construction for landowner to harvest any timber the landowner desires to harvest and sell. If requested by the landowner, ATXI will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them along the edge of the right-of-way for handling by the landowner. ATXI's intent is to mulch or windrow trees and brush of no value on site; however, it will follow the landowner's desires, if reasonable, regarding the disposition of trees and brush of no value to the landowner by windrowing, burial, chipping or complete removal of affected property.

4. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade as terrain allows.

5. Unless otherwise directed by the landowner, stumps will be treated to prevent regrowth.

6. Unless the landowner specifically states that he does not want the area seeded, disturbed areas in non-crop producing land will be restored using a native plant mix consisting of native grasses and forbs. Deep-rooted native species will be used based on their abilities to enhance wildlife, soil permeability, pollutant filtering, and their reduced needs for fertilizer, herbicides, irrigation, and mowing. In addition, the native grasses and forbs will be selected for the region and site conditions. Before seeding the disturbed areas will be prepared to allow for good seed to soil contact to promote seed-germination and early growth. The native seed mix will be applied with any needed soil amenities and a cover crop consisting of oats or winter wheat depending on the time of year the seed is applied. The seeded area will be covered to protect the seed from being dislodged by storm events or erosion. Seeding cover may include crimped straw, erosion blanket, spray on erosion control products, or other methods depending on slopes or existing erosion conditions. Final restoration activities will be considered achieved when 70% or greater of the restored area has established permanent (not cover crop) vegetation with no large barren areas.

7. Best management practices will be followed to minimize erosion, with the particular practice employed at given location depending upon terrain, soil, and other relevant factors.

8. Gates will be securely closed after use.

9. Should ATXI damage a gate, ATXI will repair that damage.

10. If ATXI installs a new gate, ATXI will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that is it secure against the escape of livestock.

11. ATXI will utilize design techniques intended to minimize corona.

12. Should a landowner experience radio or tv interference issues believed by the landowner to be attributed to ATXI's line, ATXI will work with the landowner in good faith to identify if ATXI is the root cause of the problem, and if so to attempt to resolve the issue.

13. If tiling is practiced in the area where a transmission line is to be constructed, ATXI will send a letter to all landowners to request information as to whether support structure locations will interfere with any drainage tile.

If ATXI is advised of possible drainage tile interference with a support structure location, then ATXI will conduct an engineering evaluation to determine if the support structure can be relocated to avoid interference with the tile. ATXI will make its best efforts to relocate the support structure if the engineering integrity of the electric transmission line can be maintained.

If the tile is intercepted and needs to be relocated, ATXI shall negotiate a relocation agreement with landowner. In no case shall the length of the rerouted tile exceed 125% of the length of original tile line that will be replaced.

If the tile line is intercepted and repair is necessary, such repair shall be performed in accordance with local requirements (if any), and if no requirements are available, ATXI shall reference the USDA Natural Resources conservation Service Conservation Practice Standard document, "SUBSURFACE DRAIN"- CODE 606, to aid in the repair of the damaged tile.

14. ATXI will make every reasonable effort to repair, replace, or pay to repair or replace damaged private property within 45 calendar days, weather and landowner permitting, after the transmission line has been constructed across the affected property. If the landowner is paid for any work that is needed to correct damage to his/her property, ATXI will pay the ongoing commercial rate for such work. After construction is completed, ATXI will make reasonable efforts to contact each landowner personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred. ATXI will restore all disturbed slopes and terraces to their original condition following construction.

15. In order to minimize the impact of soil compaction and rutting, ATXI, unless the landowner opts to do the restoration work, will deep rip to a depth of 18 inches all cropland, which has been traversed by construction equipment, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip to a depth of 12 inches all pasture and hayland that has been traversed by construction equipment to alleviate compaction impacts, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip or pay to have deep ripped all compacted and rutted soil, weather and landowner permitting, after the transmission line has been constructed across any affected property.

16. If desired by the landowner, ATXI will agree to apply fertilizer and lime to land disturbed by construction, weather permitting, within a mutually agreed time frame following the completion of final construction to help restore the fertility of disturbed soils and enhance the establishment of a vegetative cover to control soil erosion.

17. ATXI will remove from the landowner's property all material that was not there before construction commenced and which is not an integral part of the transmission line. (Note: Such material to be removed would also include litter generated by the construction crews).

18. ATXI will work with landowners to prevent or correct excessive erosion on all lands disturbed by construction. ATXI will use all reasonable efforts to ensure that erosion control measures are implemented, or pay the landowner to do so, within 45 days, weather and landowner permitting, following the construction of the transmission line across any affected property subject to erosion.

19. Excess soil material will be generated from the area displaced by the foundation for the support structures. ATXI will remove the excess soil material in tillable and pasture lands.

20. All ATXI contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.

### **Maintenance and Repair**

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, ATXI will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of ATXI's presence, particularly if access is near their residence.

2. ATXI will remain liable to correct damages to private property beyond the construction of the transmission line, to associated future construction, maintenance, and repairs as well.

3. All right-of-way vegetation management line clearance contractors will employ a general foreman who is a certified arborist.

4. If herbicides are used, only herbicides registered with EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.

5. To the extent maintenance outage availability permits, routine maintenance will not be planned during wet conditions so as to minimize rutting.

6. Existing access roads will be used to access the right-of-way wherever available.

7. Prior to commencing any scheduled vegetation management on the right-of-way, ATXI or an ATXI representative, upon request, will meet personally with all landowners who wish to discuss ATXI's vegetation management program and plans for their property

and to determine if the landowner does or does not want herbicides used on their property. If the landowner does not want herbicides used, they will not be used.

### **Indemnity**

ATXI will indemnify all owners of agricultural land upon which such transmission line is installed, their heirs, successors, legal representatives, and assigns from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from or arising out of the construction, maintenance, removal, repair, and use of such transmission line, whether heretofore or hereafter installed, including damage to such transmission line or any of its appurtenances, to the extent such claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or willful misconduct of ATXI, its employees, agents or contractors.