

**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.¹)

**ATXI’S RESPONSE IN OPPOSITION TO
NEIGHBORS UNITED’S MOTION TO AMEND PROCEDURAL SCHEDULE
AND ALTERNATIVE PROCEDURAL SCHEDULE AMENDMENTS**

COMES NOW Ameren Transmission Company of Illinois (“ATXI” or the “Company”),
by and through counsel, and for its response in opposition to Neighbors United Against
Ameren’s Power Line’s (the “Neighbors”) Motion to Amend Procedural Schedule (“Motion”),
and alternative procedural schedule amendments, states as follows:

The Neighbors’ Motion is yet another attempt in what is becoming a long line of attempts
to avoid a timely decision in this case on the merits.² It is also misleading in that it selectively
cites to facts that the Neighbors claim show some unfairness in the procedural schedule agreed
upon by all of the other parties to this case except, predictably, the party whose name says it all:
“Neighbors United Against Ameren’s Power Line.” An objective evaluation of the Neighbors’
participation in this case in this case leads to the conclusion that the Neighbors aren’t as much
interested in a “full and complete record,” but instead are interested in killing this project, by
whatever means they can.

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 This attempt is also consistent with the Neighbors’ efforts to find “Ways to Make the Project More Expensive for
ATXI,” as reflected in the Neighbors’ PowerPoint presentation from December, 2014, posted on the public
Facebook page for the Neighbors.

RELEVANT BACKGROUND

1. In August 2014, ATXI held the first in a series of Open Houses designed to obtain public input about possible routes for the Mark Twain transmission line, and to otherwise share information about the Mark Twain Project (the “Project”). At that time there were several different routing options under consideration. The Neighbors formed their group to oppose the Project by September 2014, within a few weeks of the first Open House. The Neighbors did not form a group to gather information or to work with ATXI on routing options, but rather, formed a group to outright oppose the Project, as their name indicates. See Exhibit A, from the Neighbors’ Facebook page on September 8, 2014.

2. Nonetheless, ATXI continued to hold Open Houses and to share knowledge regarding the Project, and continued to gather input from the public about the Project and its possible routing. The Open House process continued into early 2015.

3. Thereafter, as Mr. Wood explains, ATXI took the extensive amount of information gained during the Open House process and otherwise gathered during 2014 and early 2015, making the determination of the final routes that are presented in ATXI’s Application in this in February/March of this year.

4. After the proposed route was selected, the Company began line design work and was able to proceed with developing the cost estimate for the Project.³ The Company also engaged in its typical pre-filing outreach efforts with the Commission’s Staff and the Office of the Public Counsel prior to finalizing and filing its Application. The Application was then filed less than three months after the routing was finalized.

³ 4 CSR 240-3.105(B)1 contemplates that the plans and specifications may not be available when the Application is filed, but also contemplates that they will be before the certificate is granted.

5. In the Application, the Company requested the Commission to promptly schedule a prehearing conference for the purpose of developing a procedural schedule that would allow an order on the merits to be issued by January, 2016, slightly more than eight months after the case was filed.⁴

6. Shortly after the Application was filed (on June 12, 2015), ATXI filed a Motion for Order Scheduling a Prehearing Conference and to Establish a Date for Response to Intervention Requests, proposing a specific date (July 6, 2015) for the prehearing conference and a specific date to respond to intervention requests (June 29, 2015). The Commission granted ATXI's motion on June 16, 2015, scheduling the prehearing conference on July 8, 2015.

7. The Neighbors sought to intervene on June 18, 2015, two business days before the last day of the intervention period closed.

8. Two days before the prehearing conference, one of the Neighbors' current counsel, Ms. Hernandez, contacted the undersigned counsel for ATXI and indicated that due to a conflict on July 8 she was requesting that ATXI agree to move the prehearing conference to the next convenient date. Ms. Hernandez indicated that the Neighbors were "in the process" of retaining her. The Neighbors already had counsel for the case at the time, Mr. Henry, and discovery indicates that the Neighbors had been using Mr. Henry's services in relation to the Project since 2014. ATXI contacted counsel for the other parties to check on dates, and agreed to move the prehearing conference to July 15, 2015.

9. On June 30, 2015, ATXI provided the parties with a proposed procedural schedule and, at the prehearing conference, all of the other parties, except the Neighbors,

⁴ As discussed further below, entire general rate increase cases are generally decided by the Commission approximately 10 months after they are filed, even though they involve not just direct, rebuttal and surrebuttal testimony, but utility direct, other parties' direct (in two phases), rebuttal and surrebuttal. For example, Ameren Missouri's last rate case was decided by the Commission on April 29, 2015 – less than 10 months after it was filed.

indicated that it was largely acceptable to them. The Neighbors wanted significantly more time - approximately four additional months than had been proposed- which would have delayed the issuance of an order until April or May, 2016. Although the Neighbors made no concessions whatsoever, ATXI (and the other parties) agreed to provide two more weeks than ATXI's June 30 draft schedule had provided, which gave the Neighbors more than three months after the case was filed to prepare and file their rebuttal. All of the parties except the Neighbors proposed a procedural schedule, with the Neighbors proposing a competing schedule. The schedule proposed by all of the other parties would have given the Neighbors approximately three and one-half months after the case was filed to prepare and file rebuttal testimony, and hearings would have occurred in mid-November, 2015. The Neighbors filed a competing schedule proposing hearings about two and one-half months later, from January 25 – 29, 2016.⁵

10. The Commission then issued an order directing the parties to attempt to agree upon a compromise schedule, but as outlined in the *Revised Jointly Proposed Procedural Schedule* submitted on August 3, 2015, agreement could not be reached. The joint movants on that revised schedule, again with no concession on the Neighbors' part, added more than one month to the time allotted for preparing and filing rebuttal testimony and moved the evidentiary dates by more than a month. The Commission adopted that schedule on August 5, 2015.

11. Nearly two months later (On October 3, 2015)⁶, the Neighbors submitted 38 data requests to ATXI.

⁵ These are the same hearing dates the Neighbors now seek.

⁶ As discussed below, the date chosen by the Neighbors to serve their extensive discovery requests just happened to be the first day that the time period for responding to such requests had been shortened from 20 to 10 days per the procedural schedule.

12. All of these data requests sought information the Neighbors could have requested at any time since they were granted intervention on July 15, 2015.⁷ While 14 of the data requests were timely objected to, ATXI timely answered all of the remaining data requests.

13. On August 26, 2015, ATXI served 14 data requests on the Neighbors

14. The Neighbors objected to almost every data request and, to the extent the Neighbors were to provide answers, indicated a need for an extension beyond the due date of September 15, 2015 to September 22, 2015.

15. Partial responses were provided on September 23rd and 24th, and more on October 13.

16. A Motion to Compel was filed on October 2, 2015, and was granted (with the exception of only one data request) on October 28, 2015, requiring responses by November 9, 2015 – just one week before ATXI’s surrebuttal was due.

17. The Neighbors sent 23 more data requests to the Company on October 30, 2015. In response, the Company submitted partial objections to a number of the data requests, but indicated responses would be provided to 20 of the 23 data requests. Given that the data requests sought a great deal of data and information and the timing of their submission (in the middle of the time allotted for ATXI to evaluate rebuttal testimony and to prepare surrebuttal testimony), ATXI indicated that it might require up to December 4, 2015 to fully respond. ATXI has since indicated that it expects to have all responses to the Neighbors no later than December 1, and expects to have many of the responses to the Neighbors sooner.

⁷ The Neighbors would undoubtedly claim that they had not retained their expert yet at that time. As noted, the Neighbors have been organized and active in opposition to the Project since early September, 2014. ATXI gave notice that it would file an application in December 2014. That the Neighbors did not have an expert until about four months after the case was filed is no one’s fault but their own.

ARGUMENT

18. Despite the Neighbors' delay in serving data requests and retaining experts, the obvious theme of the Neighbors' Motion is that ATXI should have filed its Application many months earlier than it did, has improperly delayed responding their discovery, and has filed surrebuttal testimony that it should have filed as direct testimony. None of those contentions withstand scrutiny.

The Timing of the Application

19. In ATXI's view, filing an application for a certificate before it had selected a proposed route for the Project would obviously have been premature. Particularly for a line of this length and that involves a large number of landowners, it was obvious to ATXI that the Commission would expect that a specific route be proposed in the certificate case. Indeed, the Staff's rebuttal testimony in this case confirms that this was the Staff's expectation, which is reasonable and not unexpected.

20. A route could not properly be determined, or in ATXI's view could not properly be determined, without engaging in a detailed stakeholder process such as the process conducted by Ameren Services Company ("Ameren Services") on ATXI's behalf in 2014 and early 2015.⁸ Indeed, based upon its experience over many years with the Commission and its Staff, it is Ameren Services' belief that the Commission and its Staff would expect a company proposing to build a significant transmission line project to engage in a public process before selecting a route. Mr. Wood outlines the Open House process in detail in his direct testimony filed in this case. In addition to the Open Houses, ATXI also sought and obtained input relevant to routing decisions from various state and federal agencies, including the Missouri Department of Conservation, the

⁸ As the Commission knows, Ameren Services manages transmission line construction and operation for Ameren Corporation's operating subsidiaries (including ATXI) on transmission line projects.

U.S. Fish and Wildlife Service, and the Federal Aviation Administration. These stakeholder efforts were not complete until the end of 2014.

21. After completing the information gathering phase of the process, it was necessary to consider the information and to examine its impact on various routing options, a process that took until approximately March 1 of this year. As noted, the Application was filed less than three months later. The suggestion that ATXI was tardy in filing the Application is simply not true.

22. Moreover, asking that the Commission process and decide a certificate case in a period of eight months (by the end of February – about one month after reply briefs would be filed) is inherently reasonable, particularly considering that entire rate cases, which examine virtually every aspect of a utility’s business, are typically decided by the Commission about 10 months after they are filed. In Ameren Missouri’s last rate case, the Commission issued its Report and Order in just over nine and one-half months after the case was filed. The Neighbors act as though this certificate case, involving a much narrower set of issues than a rate case and requiring far less hearing time, should take as long, if not longer, than a rate case. Their position is unreasonable.

The Process that Was Due

23. Neighbors have also been afforded all of the process that they were due. In fact, while the Neighbors are free to attempt to convince the Commission to provide them more process, “due process” in a constitutional sense isn’t at issue here at all. As the Missouri Supreme Court has explained, before one gets to the question of whether one’s due process rights require a certain process, a court [the Commission in the first instance here] “must first determine whether the party has been deprived of a constitutionally protected liberty or property

interest.” *Jamison v. Dep’t of Soc. Svcs.*, 218 S.W.3d 399, 405 (Mo. banc 2007). As discussed below, this case will not decide any property interests (and certainly no liberty interest). The Neighbors “due process” argument is a red-herring, and is simply wrong as a matter of law.⁹

24. The procedural schedule in this case was and remains fair. It afforded the Neighbors four and one-half months to conduct discovery, develop testimony, etc. The entire audit time in a rate case afforded to the Staff and other parties is generally about four and one-half to five months. There are four weeks between the date of filing surrebuttal testimony in this case and the first day of the evidentiary hearings in this case. That span of time is longer than the time afforded in almost every major rate case. In Ameren Missouri’s last three rate cases, the span of time between surrebuttal testimony and the start of the hearings was 17 days, 20 days and 11 days, respectively. It is similarly common for discovery to be cut-off before the evidentiary hearings begin (in Ameren Missouri’s last rate case, the discovery cutoff date was 13 days before the hearings began). In this case, the cut-off date is one week before the hearings start.

25. It is also exceedingly common for parties to have to deal with surrebuttal testimony from a large number of witnesses. Again in reference to Ameren Missouri’s last rate case, there were 46 pieces of surrebuttal testimony filed by non-Ameren Missouri witnesses.

26. It is also not true, as the Neighbors imply, that ATXI effectively was required to anticipate what contentions might be made in rebuttal to its Application and to pre-emptively provide testimony “in response,” insofar as the contentions had not been made, and insofar as it was anyone’s guess exactly what contentions would be made. ATXI filed direct testimony from eight different witnesses. That testimony addressed all of the items required by the

⁹ It is ironic to say the least that the Neighbors are attempting to invoke a constitutional protection that doesn’t apply here given that the Neighbors have twice made filings with the Commission claiming that it is powerless to proceed with this case at all if it must in any way, shape or form interpret the Constitution.

Commission’s certificate rule, 4 CSR 240-3.105, and specifically addressed each and every one of the “Tartan” criteria the Commission typically examines in considering certificate applications. There is no question – and no allegation to the contrary – that the direct testimony filed would have, without more, provided ample substantial and competent evidence in support of a Commission decision to approve a certificate for the Project. The Commission’s rule on the pre-filing of testimony requires the applicant to provide “testimony and exhibits asserting and explaining that party’s entire case-in-chief.” 4 CSR 240-2.130(7)(A). ATXI did so in this case.¹⁰

27. Subsection (7)(B) of that same rule specifically calls for the filing of surrebuttal testimony to, not surprisingly, respond to other parties’ rebuttal testimony, as does the procedural schedule adopted in this case. The Neighbors filed rebuttal testimony that challenged to one degree or another whether the Project meets the Tartan criteria, and the Company filed the surrebuttal testimony it believed appropriate to rebut those challenges (as well as in response to certain Staff testimony).

28. As is true in virtually every case before the Commission (and indeed, before most if not all tribunals), the party with the burden of proof – ATXI here – opens and closes the evidence.¹¹ That often means that the party with the burden of proof may file surrebuttal testimony from new witnesses. Ameren Missouri filed direct testimony from one witness in the certificate case for the Labadie Utility Waste Landfill (File No. EA-2012-0281) but, to respond

¹⁰ Direct testimony in support of an application is not actually required. For example, in ATXI’s CCN application for its Illinois Rivers Project (File No. EA-2015-0145) did not include any direct testimony, yet this Commission was able to make a determination that the *Tartan* factors were met.

¹¹ In Missouri, rate cases have been handled differently in that the practice has been for the utility to file a direct case, and then other parties to file a direct case, followed by rebuttal, followed by surrebuttal – effectively creating a situation where all parties “open and close.” In most states, a more traditional process is followed in rate cases but, in any event, the typical process is followed by this Commission in all cases except rate cases.

to testimony offered by the opposing landowner group in that case, filed surrebuttal testimony from four additional witnesses. In this case, eight additional witnesses filed surrebuttal testimony because of the contentions the Neighbors have raised.

Discovery

29. With almost no exception, the 63 data requests submitted by the Neighbors to ATXI in this case all seek information that could have been requested by the Neighbors *at any time* on or after it was granted intervention in this case on July 15, 2015. Instead, the Neighbors waited until October to ask any data requests (not coincidentally, on the first day when the response time was reduced from 20 days to 10 days, as agreed upon in the jointly proposed procedural schedule) at all. Moreover, the Neighbors' extensive second set of data requests were served during the relatively short period of time during which all of the local public hearings in the case were occurring, and within which ATXI had to prepare surrebuttal testimony. Undoubtedly the Neighbors will claim that they did not have their expert, Mr. Powers, engaged until nearly October and that he was busy preparing rebuttal testimony through October 21. As noted, the Neighbors have been organized in their opposition to the Project since early September, 2014. The Neighbors have had counsel¹² since 2014 as well, and counsel sought intervention in mid-June. As noted, the discovery cut-off date in this case is closer to the hearings than is often the case. If the Neighbors do not at this moment have the discovery they believe they needed, that problem is one of their own making.¹³

¹² Mr. Paul Henry, who remains one of the Neighbors counsel of record in this case.

¹³ Perhaps the Neighbors' efforts should have been directed to engaging experts and seeking discovery early in their participation in this case, rather than spending time developing a large number of affidavits from among their members to support a motion to dismiss (having claimed in resisting discovery that information from the members could not be obtained), and in renewing their motion to dismiss by asking for reconsideration of this Commission's denial of it, or in working (at their counsel's direction) to procure duplicative and self-serving "resolutions" from county commissions.

Other Contentions of the Neighbors

30. The Neighbors contend that this case is incredibly complex. It is certainly no more--and is indeed less--complex than a general rate case, and it is no more complex than a typical certificate case. The presumably “complex” subject matter that the Neighbors apparently point to would include the publicly-available MISO MTEP 11 Report¹⁴ and the 2014 Triennial Update, all of which have been publicly available since 2011 and 2014, respectively, and other information such as the MISO RGOS study,¹⁵ also available since 2008. The Neighbors’ expert, Mr. Powers, had no trouble accessing and addressing this information, nor did he have any trouble accessing or addressing Ameren Missouri’s 2011 and 2014 Integrated Resource Plans.

31. The Neighbors’ opposition to the Project is also not “complex.” The Neighbors don’t want this line to be built, on that they have been clear. Nor have the Neighbors been deprived of the ability to make their views known to the Commission. There was no restriction on the amount of rebuttal or surrebuttal testimony that they filed. No less than 67 Neighbors’ members testified at the Local Public Hearings in this case, and each such member was afforded more than ample time to raise whatever issue they desired.

32. As the Commission itself has already recognized, and as indicated in ATXI’s Response in Opposition to Neighbors United’s Motion for Reconsideration, filed November 23, it is also not true that “private property rights are at stake” by virtue of this certificate case. Motion, p. 3. As Judge Pridgin indicated at each Local Public Hearing, “[t]he Commission cannot decide any questions about eminent domain. Those questions can only be addressed in Circuit Court.”¹⁶ Moreover, as the Commission has already recognized, its decision doesn’t

¹⁴ Midcontinent Independent System Operator, Inc. (“MISO”) 2011 Transmission Expansion Planning Report.

¹⁵ MISO Regional Generator Outlet Study.

¹⁶ Tr., File No. EA-2015-146, Vol. 3, p. 5, l. 3-6.

affect the “right-to-farm.” The Neighbors want this case to be about eminent domain and about the “right-to-farm,” but it isn’t. It’s about public convenience and necessity relating to utility facilities; nothing more, and nothing less.

33. Because that is what this case is about, the Commission will decide if the Project is necessary or convenient for the public service and, in due course assuming a certificate is granted, individual landowners will decide whether to agree to the necessary easements. Similarly, a court will decide whether any exercise of condemnation by ATXI, if that becomes necessary, is authorized by law, and will decide the just compensation that is due. Consequently, either individuals or the courts will address “private property rights.” This Commission does not.

The Importance of a Timely Ruling in this Case - Alternatives

34. The pre-filed testimony in this case indicates that there is no serious debate about the significant economic benefits the Project brings: MISO’s most recent analysis indicates a benefit/cost ratio for Missouri of between 2.3 to 3.3 times.¹⁷ No one claims that Project will not fully address reliability issues in Northeast Missouri,¹⁸ and the only witnesses in the case with specific knowledge of wind development potential in North Missouri confirm that without the Project, most of that wind potential cannot be realized. It is undisputed that MISO has set the in-service date for the Project at December 2018, and there is no dispute that without the Project there will remain a gap in the MVP portfolio preventing the delivery of generation, primarily wind generation, from the North and the West (e.g., from the Dakotas, Minnesota and Iowa).

¹⁷ The Neighbors claim there should be other alternatives and offer a litany of other claims in opposition to the Project, but no witness has actually offered any serious rebuttal to MISO’s benefit/cost ratios or to supporting analyses offered by ATXI witness Todd Schatzki, Ph.D.

¹⁸ Again, the Neighbors offer a litany of unproven alternatives which the Company’s surrebuttal testimony addresses.

Finally, no one disputes the tightness of the construction schedule to meet MISO's in-service date, even with an order in February, 2016, as the current schedule allows. Adding seven weeks to the schedule will almost certainly prevent meeting MISO's in-service date, thus delaying the economic benefits of the Project, the resolution of the reliability issues the Project solves and the facilitation of wind development in Northeast Missouri.

35. For the foregoing reasons, it is ATXI's position that the current schedule need not be changed. However, mindful that the Commission generally attempts to accommodate scheduling concerns when it can, and given the Staff's and OPC's lack of opposition to the proposed schedule change, if the Commission is inclined to change the schedule, ATXI offers the following alternatives to some of the dates proposed by the Neighbors:

- The last day to request written discovery should be December 11, 2015, and further written discovery should be limited to discovery directed toward new information contained in surrebuttal testimony only. As earlier noted, almost all of the Neighbors' discovery to date has sought information the Neighbors could have asked for at any time after the Neighbors became a party to this case. This additional time shouldn't afford the Neighbors yet more time to engage in discovery they should already have completed.¹⁹
- The deadline for filing any motions to compel discovery should be December 31, 2015.
- The last day to notice depositions should be December 28, and depositions should be completed by January 15, 2016. Given the significant delay in the evidentiary hearings dates, there is no reason for depositions to be taking place on the eve of hearings.

¹⁹ The period to object or to notify that additional time is needed to respond would remain at five business days, with 10 calendar days to respond.

- Initial briefs should be due February 19, 2016; reply briefs March 4, 2016. As noted, this delay still imperils the in-service date of the Project, but every week matters.²⁰

36. The Company reiterates the importance of avoiding further delays in the schedule, and of a prompt ruling once briefing is complete. The current schedule afforded the Neighbors an additional month beyond the schedule the Company originally proposed, pushing off the possibility of a Commission order until perhaps late February. Even with the alternatives outlined by the Company herein, an additional approximately four weeks will be lost; as noted, seven weeks would be lost under the Neighbors' latest proposal. While the Neighbors are entitled to oppose this Project, they are not entitled to interminably delay a resolution of the Application on the merits. Until the certificate is granted, there remains uncertainty about routing, which is why ATXI has not proceeded to acquire permanent easement rights, even though there are landowners who want to discuss right-of-way acquisition with ATXI. There are 377 parcels along the route – right-of-way acquisition will take a significant amount of time, followed by a lengthy construction period.

²⁰ The hearing transcripts should be expedited so that they are fully available no later than February 1, 2016.

WHEREFORE, ATXI respectfully requests that the Commission deny the Neighbors' Motion but in the alternative, if the evidentiary hearings are to be moved as the Neighbors request, to modify the Neighbors' procedural requests as outlined herein.

Respectfully submitted,

/s/ James B. Lowery _____

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CERTIFICATE OF SERVICE

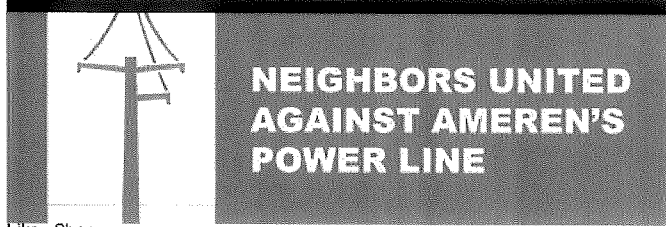
I do hereby certify that a true and correct copy of the public version of the foregoing Motion to Compel Discovery has been e-mailed, this 24th day of November, 2015, to counsel for all parties of record.

/s/ James B. Lowery

**An Attorney for Ameren Transmission
Company of Illinois**



Mike Patterson updated the group photo.
September 8, 2014

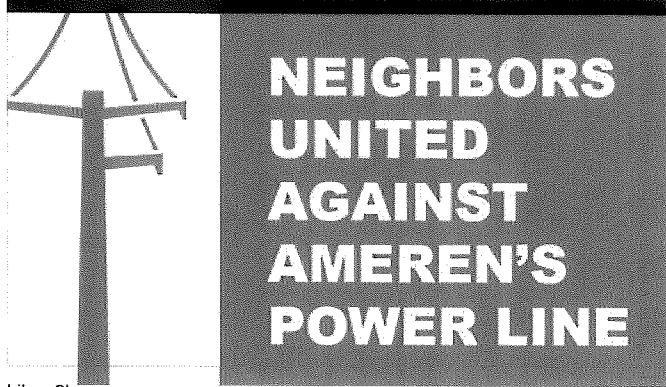


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Mike Patterson
September 8, 2014




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4 people like this.



Mike Patterson created an event for Neighbors United Against Ameren's Power Line.
September 8, 2014

SEP 08	<p>Monday, September 8, 2014 at 7:00pm Adair County Annex, 201 N. Franklin St. Kirksville, MO</p> 
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Mike Patterson created the group.
September 8, 2014

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Jeannette Gregory likes this.



Mike Murphy and 293 other people are in this group.

