

**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 in Marion County,)
Missouri and an Associated Switching Station)
Near Palmyra, Missouri.)

File No. EA-2015-0145

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, in response to the Missouri Public Service Commission's April 7, 2015 Order Directing Filing directing the Staff to file no later than April 20, 2015, a recommendation on how it believes the Commission should proceed. Pursuant to the Commission's Order, the Staff states as follows:

1. On December 9, 2014, ATXI filed a 60-day notice as contemplated by 4 CSR 240-4.020(2) that it might file a conditional application for a certificate of public convenience and necessity ("CCN"), pursuant to Section 393.170, seeking a determination that the Commission lacks authority to issue a CCN to ATXI, but requesting, in the alternative, that if the Commission determines that it possesses such authority, the Commission issue such a CCN to ATXI to construct, install, own, operate, maintain, and otherwise control and manage a 345,000-volt electric transmission line approximately 7 miles in length in northeastern Missouri from a new switching station to be constructed near Palmyra, Missouri, and extending across the Mississippi River to Quincy, Illinois.

2. On February 20, 2015, ATXI filed an Application, pursuant to Section 393.170 RSMo., 4 CSR 240-2.060, and 4 CSR 240-3.105 for a CCN to construct, install, operate, own, maintain, and otherwise control and manage a 345,000-volt electric transmission line, including a new switching station, to be constructed within Marion County, Missouri. The project is a part of one of the multi-value projects (“MVP”), called the Illinois Rivers Project, approved by the Midcontinent Independent System Operator (“MISO”) in 2011. The Application states that 7 miles of the 385 mile long Illinois Rivers Project is located in Missouri and that the estimated cost of construction of the Missouri part of the project is \$68.1 million (transmission line, switching station, and river crossing). (Page 3, para. 6; page 4, para. 11). The total expected cost of the Illinois Rivers Project is estimated to be \$1.394 billion. (ATXI Response to Staff Data Request No. 4).

3. Since ATXI will not provide retail service to end-use customers and thus, will not be rate-regulated by the Commission, ATXI requests that the Commission waive the rate schedule filing requirement of 4 CSR 240-3.145, the annual reporting requirement of 4 CSR 240-3.165, the depreciation study requirement of 4 CSR 240-3.175, and the reporting requirements of 4 CSR 240-3.190(1), (2) and 3(A)-(D) for good cause. ATXI agrees to file with the Commission the annual report it files with the FERC.

4. ATXI states in its Application that by filing its Application it does not consent to the jurisdiction or authority of the Commission, and reserves its right to seek judicial review of such assertion of jurisdiction or authority should the

Commission choose to assert authority or jurisdiction rather than dismissing this Application.

5. ATXI requested in its Application that the Commission approve its Application no later than April 30, 2015, so that ATXI may begin construction and place the Illinois Rivers Project transmission line in service by November 2016, which is the in-service date required by MISO. (Page 6, para. 18). On March 25, 2015, the Commission issued an Order Directing Filing, ordering the Staff to file a recommendation or an alternative pleading on how it believes the Commission should proceed by no later than April 6, 2015.

6. On April 6, 2015, the Staff filed a Response requesting until April 20, 2015, to complete its review and file its recommendation. The Staff stated in its Response that unless it became aware of information that would have a material impact on its view at the time, the Staff's intention was to recommend that the Commission has jurisdiction and should grant approval of the Application of ATXI with conditions. The Staff Response further stated that counsel for Staff had advised Counsel for ATXI of the Staff's intention to request an April 20, 2015, filing date for Staff's recommendation, and Counsel for ATXI had related that Staff might indicate that ATXI had no objection to the proposed April 20, 2015 date.

7. The Staff contends that the Commission has authority to issue a CCN to ATXI to construct, install, own, operate, maintain, and otherwise control and manage a 345,000-volt electric transmission line approximately 7-8 miles in length in northeastern Missouri from a new switching station to be constructed near Palmyra, Missouri, and

extending across the Mississippi River to Quincy, Illinois. Section 393.170, RSMo. 2000 governs CCNs. It provides:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.
2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.
3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

Pursuant to Section 393.120, RSMo. 2000, the terms “electrical corporation” and “electric plant” are defined in Section 386.020(14) and (15), RSMo. Cum. Supp. 2013 as follows:

(14) **"Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever**, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, **owning, operating, controlling or managing any electric plant** except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others [Emphasis added];

(15) **"Electric plant" 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 generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power** [Emphasis added];

Both definitions have remained unchanged since the enactment of the Public Service Commission Act in 1913, and the only change since 1913 to the language of Section 393.170, RSMo. 2000, has been to add sewer corporations to the list of utilities.

8. Section 1.190, RSMo, provides, "Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import"; however, when the Legislature provides a definition for a word or phrase, that definition is authoritative and to be read into the statute where that word or phrase appears as a part of the statute itself. *State ex rel. Exchange Bank of Richmond v. Allison*, 155 Mo. 325, 56 S.W. 467 (1900); *State v. Brushwood*, 171 S.W.3d 143 (Mo. App. W.D. 2005). Under these directives and as further set out herein, ATXI is an "electrical corporation" that owns and operates "electric plant" and requires a CCN from the Commission for its proposed transmission facilities in Missouri.

9. The Missouri Supreme Court in *Public Serv. Comm'n v. Kansas City Power & Light Co.*, 325 Mo. 1217, 31 S.W.2d 67 (1930), held that an extension of an existing transmission line, not authorized by an existing CCN, required a new CCN from the Commission. In that case the Commission sought, and obtained an injunction against KCP&L from operating or using a six-mile extension of one of its transmission lines. KCP&L had a CCN from the Commission for the transmission line, but not the

extension. It is noteworthy that KCP&L was then a vertically integrated electric utility, and the Court spoke in its opinion about the potential impacts not only on existing utility customers of a utility extending its transmission lines, but also of the utility's wherewithal to make the extension. The Supreme Court affirmed the circuit court and held the Commission had authority under the statute now codified at Section 393.170, RSMo., to condition a CCN to assure the transmission line provides adequate and efficient service to the public without injuring the operation of telephone lines.

10. That public utilities do not seek new CCNs for every transmission line and transmission line extension is due to the Commission taking the approach in the 1930's of granting blanket certificates. That approach began in 1934 with the Commission's *Report and Order in Re Kansas City Power & Light Co.*, 21 Mo.P.S.C. 1 (1934). In that *Report and Order*, the Commission granted KCP&L "authority to construct, reconstruct, locate, relocate, maintain and operate electric transmission lines along, over, and across the highways of the Counties of Jackson, Clay, Cass, Platte, Carroll, Chariton, Howard, Lafayette, Pettis, Randolph and Saline, and along such other routes as may be properly provided in said counties, all in the State of Missouri, with authority to furnish electric service to all persons in the area for which this certificate is granted, such area being more fully described by the maps filed herein by this Applicant" *Id.* at 6.

11. Because ATXI is a company owning, operating, controlling or managing any electric plant operated, controlled, owned, used or to be used for or in connection with or to facilitate the transmission of electricity, it must be granted a CCN before it can proceed with the projects detailed in its *Application* and in Staff's Memorandum. Sections 386.020(14) and (15), RSMo. Cum. Supp. 2013

12. Section 393.170.3 addresses the standard by which ATXI's *Application* may be approved, stating:

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is **necessary or convenient for the public service**. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void. [Emphasis added.]

13. In this case, granting a CCN to ATXI must be based on a showing that it is necessary or convenient for the public service for ATXI to own, construct, operate, and maintain certain electric transmission facilities. In the 1994 case, *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994), the Commission commented that “[a]lthough there is a dearth of statutory guidance, the Commission has articulated “the criteria to be used in evaluating such applications in *Re Intercon Gas, Inc.*, 30 Mo.P.S.C.(N.S.) 554, 561 (1991).” The Commission stated that the Intercon case combined the standards used in several similar CCN cases, and set forth the following criteria for deciding whether to grant Tartan Energy a CCN to provide retail gas service in a number of southern Missouri counties:

- 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. *Id.*

In the *Tartan Energy* case, the Commission explained that the Commission first stated these five factors in *Re Intercon Gas, Inc.*, 30 Mo.P.S.C.(N.S.) 554 (1991), where the

Commission canvassed a number of certificate cases and distilled the criteria for a CCN into these five factors for purposes of deciding whether, and to whom, to grant a CCN for an intrastate natural gas pipeline. Intercon Gas, Inc. ("Intercon"), Missouri Gas Co. ("MoGas"), Missouri Pipeline Co. ("MPC"), and Laclede Gas Co. ("Laclede") applied to the Commission for CCNs for various gas plant operations. MoGas, MPC and Laclede were awarded CCNs and Intercon was denied a CCN. Circuit Court affirmed and appeal was taken.

14. In *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n*, 848 S.W.2d 593, 597-98 (Mo. App. 1993), the Western District Court of Appeals held as follows:

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." Section 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 Service 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.

15. The attached Staff Memorandum Recommendation concludes that ATXI meets the criteria that the Commission has adopted for determining whether to grant a CCN when it has the authority to do so, which it does in this case.

16. The FERC in its Order No. 1000 issued in 2011 in part removed the incumbent transmission owner's federal right of first refusal to construct regional

transmission facilities to be interconnected to the existing transmission system. The FERC stated that its focus was regional transmission, not local transmission.¹ The FERC also made it clear that it was not addressing state or local laws concerning the siting or permitting of transmission facilities:

. . . Nothing in this Final Rule is intended to limit, preempt or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities. This Final Rule does not require removal of references to such state or local laws or regulations from Commission-approved tariffs or agreements. [FERC Order No. 1000, Para. 253, footnote 231]

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, FERC Order No. 1000, FERC Stats. & Regs. ¶ 31,323, 2011 WL 3489460, 76 FR 49842-01(Aug. 11, 2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), 2012 WL 1758693, *order on reh'g*, Order No. 1000-B, 141 FERC ¶

¹ The FERC stated in Paras. 63 and 318 of its Order No. 1000, in part, as follows:

63. . . . A local transmission facility is a transmission facility located solely within a public utility transmission provider's retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.

* * * * *

318. The Commission's focus here is on the set of transmission facilities that are evaluated at the regional level and selected in the regional transmission plan for purposes of cost allocation.²⁹⁹ As Edison Electric Institute notes, in those regions relying on “bottom up” local transmission planning, a transmission facility that is in a public utility transmission provider's local transmission plan might be “rolled-up” and listed in a regional transmission plan to facilitate analysis at the regional level. However, the transmission facility from the local transmission plan might not have been proposed in the regional transmission planning process and might not have been selected in the regional transmission plan for purposes of cost allocation by going through an analysis in the regional transmission planning process. The Commission does not, in this Final Rule, require removal from Commission-jurisdictional tariffs and agreements of a federal right of first refusal as applicable to a local transmission facility, as that term is defined herein. [footnote omitted]

²⁹⁹ In order for a transmission facility to be eligible for the regional cost allocation methods, the region must select the transmission facility in the regional transmission plan for purposes of cost allocation. For those facilities not seeking cost allocation, the region may nonetheless have those transmission facilities in its regional transmission plan for information or other purposes, and then having such a facility in the plan would not trigger regional cost allocation.

61,044 (2012), 2012 WL 5063059, *affirmed by, South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C.Cir. 2014). The first sentence in the quote above appears in a number of places in FERC Order No. 1000. *Id.* at Para. 227, 287.

17. Former FERC Chairman James J. Hoecker and FERC General Counsel Douglas W. Smith recently authored an Energy Law Journal article *Regulatory Federalism and Development of Electric Transmission: A Brewing Storm?* 35 ENERGY LAW J. 71 (2014) that, among other things, discussed Section 216 of the Federal Power Act (“FPA”)(16 U.S.C. Section 824p) which was adopted by Congress in the Energy Policy Act of 2005. Section 824p grants the FERC limited “backstop” authority to permit and site transmission lines in “national interest electric transmission corridors” designated by the U.S. Department of Energy. Hoecker and Smith concluded that “the FERC’s siting authority under 16 U.S.C. Section 824p has been narrowly construed by the courts, and states continue to have nearly exclusive jurisdiction over transmission siting.” 35 ENERGY LAW J. at 83.² Attempts to read 16 U.S.C. Section 824p broadly have failed.

² Section 824p(a) states that not later than 1 year after 2005 and every 3 years thereafter, the Secretary of Energy (“Secretary”) in consultation with affected States shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, the Secretary is to issue a report which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation with the appropriate regional reliability entity, which in the case of Missouri is either the SERC Reliability Corporation or the SPP Regional Entity. (The six additional regional reliability entities designated by the North American Electric Reliability Corporation (“NERC”) are Florida Reliability Coordinating Council, Midwest Reliability Organization, Northeast Power Coordinating Council, ReliabilityFirst Corporation, Texas Reliability Entity, and Western Electricity Coordinating Council.)

Except as provided regarding interstate compacts, the FERC may after notice and an opportunity for hearing, issue one or more permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor designated by the Secretary if the FERC finds that a State in which the transmission facilities are to be constructed or modified does not have authority to approve the siting of the facilities; the applicant for a permit is a transmitting utility under this chapter but does not qualify to apply for a permit or siting approval for the proposed project in a State because the applicant does not serve end-use customers in the State; the state regulatory entity with siting authority

18. In *Piedmont Environmental Council v. FERC*, 558 F.3d 304, 313 (4th Cir. 2009) FERC's attempt to read the phrase "withheld approval for more than 1 year after the filing of an application seeking approval" in 16 U.S.C. Section 824p(b)(1)(C)(i)'s to include a state Commission's outright denial of an application for the construction or modification of electric transmission facilities in a national interest corridor within one year was overturned by the Fourth Circuit Court of Appeals:

FERC interprets § 216(b)(1)(C)(i)'s phrase "withheld approval for more than 1 year after the filing of [a permit] application" to include a state's outright denial of an application within one year. We conclude that FERC's interpretation is contrary to the plain meaning of the statute. Simply put, the statute does not give FERC permitting authority when a state has affirmatively denied a permit application within the one-year deadline.

We begin with the word "withhold," which means "to hold back: keep from action" or "to desist or refrain from granting, giving, or allowing." Webster's Third New Int'l Dictionary (Webster's) 2627 (2002). We must, of course, consider the word "withheld" in the context of the statutory phrase in which it is used—"withheld approval for more than 1 year." The phrase, read as a whole, means that action has been held back *continuously* over a period of time (more than one year). The continuous act of withholding approval for more than a year cannot include the finite act of denying an application within the one-year deadline. The denial of an application is a final act that stops the running of time during which approval was withheld on a pending application.

558 F.3d at 313.

19. On October 5, 2007, DOE designated two national interest electric transmission corridors: the Mid-Atlantic Area National Interest Electric Transmission Corridor covering certain counties in Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and Virginia, and the cities of Washington, D.C., Baltimore, and Alexandria, Harrisonburg, Fairfax, Falls Church, Manassas, Manassas

has "withheld approval for more than 1 year after the filing of an application seeking approval or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later." 16 U.S.C. Section 824p(b)(1)(A), (B), and (C).

Park, and Winchester, VA (“Mid–Atlantic Corridor”), and the Southwest Area National Interest Electric Transmission Corridor covering certain counties in California and Arizona (“Southwest Corridor”). 72 Fed.Reg. 56,992 (Oct. 5, 2007). However, in *California Wilderness Coal v. U.S. Dep’t of Energy*, 631 F.3d 1072, 1107, 1083 (9th Cir. 2011), the Ninth Circuit vacated DOE’s national interest electric transmission corridor designations because DOE failed to: (a) undertake a Congestion Study in consultation with the affected States, and (b) comply with the National Environmental Policy Act (“NEPA”). First, DOE’s failure to consult with the affected States was prejudicial to the States. Second, DOE’s failure to comply with NEPA causes DOE’s statement that its designation of national interest electric transmission corridors does not significantly affect the quality of the human environment, to not be supported by sufficient evidence to show that DOE has taken the requisite hard look at the environmental consequences, and the record does not allow the Court to conclude that the failure to take a hard look at the environmental consequences was harmless. At present, there are no national interest electric transmission corridors.

20. The Staff sought to make it clear to the Commission in File No. EO-2011-0128,³ Ameren Missouri’s most recent case for Commission authority to continue to participate in the MISO, that pre-FERC Order No. 1000, under the MISO Transmission Owner’s Agreement (“TOA”), each of the Ameren Corporation (“Ameren Corp.”) transmission-owning companies, Ameren Missouri, ATXI, and Ameren Illinois Company had the right and responsibility to build a transmission project that connected to the Ameren Corp. combined system.

³ In the Matter of the Application of Union Electric Company for Authority to Continue The Transfer of Functional Control of Its Transmission System to the Midwest Independent Transmission System Operator, Inc.

21. In response to Staff Data Request No. 1, ATXI stated that no part of the Illinois Rivers Project is in the certificated service area of Ameren Missouri. In response to Staff Data Request No. 2, ATXI stated that it was its understanding that the electric load in the vicinity of the Illinois Rivers Project in Missouri is served by the Missouri Rural Electric Cooperative. The May 17, 2012, Order Granting Ameren Missouri's Motion To Clarify Report And Order and the April 19, 2012, Report And Order in File No. EO-2011-0128 address the situation of the Illinois Rivers Project being constructed by a non-rate regulated affiliate of Ameren Missouri constructing regional transmission outside of the service territory of the rate-regulated affiliate. The FERC incentives apply. Paragraph 2.S. of the Order Granting Ameren Missouri's Motion To Clarify Report And Order states:

2.S. For **transmission facilities located in Ameren Missouri's certificated service territory that are constructed by an Ameren affiliate** and that are subject to regional cost allocation by the Midwest ISO, for ratemaking purposes in Missouri. the costs allocated to Ameren Missouri by the Midwest ISO will be adjusted by an amount equal to the difference between: (i) the annual revenue requirement for such facilities that would have resulted if Ameren Missouri's Commission-authorized ROE and capital structure had been applied and there had been no CWIP (if applicable), or other FERC Transmission Rate Incentives, including Abandoned Plant Recovery, recovery on a current basis instead of capitalizing pre-commercial operations expenses and accelerated depreciation, applied to such facilities and (ii) the annual FERC-authorized revenue requirement for such facilities. The ratemaking treatment established in this provision will, unless otherwise agreed or ordered, end with the Commission's next order regarding Ameren Missouri's participation in the Midwest ISO, another RTO or operation as an ICT. (from paragraph 10.j of the stipulation and agreement)

Other language in the Commission's Order Granting Ameren Missouri's Motion To Clarify Report And Order follows:

2.j Ameren Missouri shall acknowledge that the Service Agreement's primary function is to ensure that the Missouri Public Service Commission continues to set the transmission component of Ameren Missouri's rates to serve its Bundled Retail Load. Consistent with Section 3.1 of the Service Agreement and its primary function, to the extent that the FERC offers incentive "adders" for participation in an RTO or in an ICT to the rate of return allowed for providing Transmission Service, as that term is defined in the Service Agreement, to wholesale customers within the Ameren zone, such incentive adders shall not apply to the transmission component of rates set for Bundled Retail Load by the Commission. [from paragraph 10.c of the stipulation and agreement.]

22. The Staff asked in Staff Data Request No. 6 what are the stages of completion of the construction of the Illinois Rivers Project in Illinois and Indiana. On March 26, 2015, ATXI responded:

Currently, construction has started on one (1) of the nine (9) transmission line segments in Illinois. Additionally, six (6) of the nine (9) substations in Illinois are in various stages of construction. ATXI is not performing any work in Indiana.

23. The Staff Memorandum Recommendation concurs with ATXI's request that the Commission waive the rate schedule filing requirement of 4 CSR 240-3.145, the annual reporting requirement of 4 CSR 240-3.165, the depreciation study requirement of 4 CSR 240-3.175, and the reporting requirements of 4 CSR 240-3.190(1), (2), and 3(A)-(D) for good cause, but require ATXI to file with the Commission the annual report it files with the FERC. The Staff Memorandum Recommendation also requests that the Commission condition the granting of a CCN on ATXI agreeing to follow certain construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management outlined in its response to Staff Data Request No. 22 which is appended to the Staff Memorandum Recommendation.

WHEREFORE, the Staff files its Memorandum Recommendation in response to the Commission's April 7, 2015, Order Directing Filing.

Respectfully submitted,

/s/ Steven Dottheim

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of April, 2015.

/s/ Steven Dottheim

MEMORANDUM

TO: Missouri Public Service Commission Official Case File - Case No. EA-2015-0145, 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 in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.

FROM: Daniel I. Beck, Engineering Analysis;
Sarah Kliethermes, Economic Analysis

<u>/s/ Natelle Dietrich 04/20/15</u>	<u>/s/ Steve Dottheim 04/20/15</u>
Tariff, Safety, Economic And Engineering Analysis Date	Staff Counsel's Office / Date

SUBJECT: Recommendation to Approve CCN Application with Conditions

DATE: April 20, 2015

OVERVIEW

The Staff of the Missouri Public Service Commission ("Staff") submits the instant Memorandum regarding the Application of Ameren Transmission Company of Illinois ("ATXI") for alternatively, (1) a Missouri Public Service Commission ("Commission") Certificate of Convenience and Necessity ("CCN") authorizing it to own, acquire, construct, operate, control, manage and maintain an electric transmission line, including a new switching station, within Marion County, Missouri, per section 393.170, and sections 386.020(14) and (15), RSMo 2000, or (2) alternatively, for an order declining jurisdiction in this matter and dismissing this conditional application on the grounds that the Commission does not have jurisdiction over ATXI because ATXI is not a "public utility" under Missouri law. The Application meets the filing requirements of 4 CSR 240-3.060 and 4 CSR 240-3.105.

ATXI filed its 60-day notice with the Commission on December 9, 2014, meeting the 60-day contested case notice requirements of 4 CSR 240-4.020. ATXI requests that the Commission issue an Order in this case that would allow the new transmission line to be built and operable by November 2016. Specifically, ATXI requests that the Commission approve this CCN application at its earliest convenience, but in no event later than April 30, 2015, so that ATXI may begin construction promptly.

ATXI is a corporation existing and organized in the State of Illinois, its principal place of business being at 1901 Chouteau Avenue, St. Louis, Missouri 63103. As illustrated in Appendix B in its Application, ATXI is authorized to do business within the State of Missouri.

ATXI does not currently file annual reports with the Commission nor is it required to pay assessment fees. ATXI's Application requests a waiver from certain filing requirements and provides the following rationale:

Because ATXI will not provide retail service to end-use customers and will not be rate-regulated by the Commission, ATXI requests that the Commission waive the rate schedule filing requirement of 4 CSR 240-3.145, the annual reporting requirement of 4 CSR 240-3.165, the depreciation study requirement of 4 CSR 240-3.175, and the reporting requirements of 4 CSR 240-3.190(1), (2) and 3(A)-(D) for good cause. ATXI agrees to file with the Commission the annual report it files with FERC.

Staff is not aware of any pending actions or unsatisfied judgments against ATXI concerning customer service or rates occurring within three years of this filing.

On February 23, 2015, the Commission issued an Order informing any proper person or entity who desired to intervene in this case to file such application by March 16, 2015. United for Missouri, Inc., and Missouri Industrial Energy Consumers each filed an application to intervene and were granted intervention status on March 24, 2015. On March 25, 2015, the Commission issued an Order directing the Staff to file a recommendation or status report in this case by April 6, 2015. Staff filed a status report on April 6, 2015, stating its intention to file a recommendation by April 20, 2015.

DISCUSSION

ATXI's Application includes the following description:

ATXI proposes to construct, install, own, operate, control, manage and maintain in Missouri a 345,000-volt electric transmission line approximately 7 miles in length that includes a new switching station and that runs generally from the new switching station to be constructed near Palmyra, Missouri, through Marion County in Missouri and extending across the Mississippi River to the Missouri state line (the Project). The transmission line conductors will be supported primarily by single shaft steel pole structures 110-170 feet in height, with typical spans of 600-900 feet. These steel structures will be erected within a 150-foot right-of-way.

In addition the Application includes a map that shows that the new switching station would be titled the Maywood Substation and would be located northwest of Palmyra. The transmission line would extend mostly easterly to the Mississippi River crossing referred to in the Application. Based on the map, Staff maintains that the actual distance is at least 8 miles. The 8-mile estimate appears to be confirmed by plat maps that show that the following Sections of land will be crossed:

Township	Range	Section
59 North	5 West	33,34
58 North	5 West	4,5,6
58 North	6 West	1,8,9,10,11,12

The Application also includes a Drawing/Diagram of Steel Monopoles and Switching Station in Appendix C. Later in the Application, ATXI outlines its plan to have the construction of project completed and place the new line in-service by November 2016, which is the in-service date required by the Midcontinent Independent System Operator (“MISO”).

MISO is one of the two major RTO/ISOs that operate in Missouri. Ameren Missouri, the largest public utility in Missouri, and the City of Columbia are transmission owners in MISO. ATXI is affiliated with Ameren Missouri, however no part of the Illinois Rivers Transmission Project is in the Ameren Missouri certificated service territory.¹ Therefore, Ameren Missouri will not be required to make any adjustment to the regionally allocated costs it is assigned from this project to account for FERC Transmission Rate Incentives as discussed in paragraph 2S of the Commission’s May 17, 2012 Order Granting Ameren Missouri’s Motion To Clarify Report and Order in File No. EO-2011-0128.

One of the benefits that MISO provides is regional transmission planning. The Multi Value Projects (MVPs) portfolio, which include the Illinois Rivers Transmission Project in this filing, were approved by MISO in 2011. Concerning the MVPs, MISO’s website provides that:

MISO and its stakeholders develop comprehensive transmission expansion plans to meet the reliability needs of the bulk electric system and the policy and economic of its dependents. Implementation of a value-based planning process creates a consolidated transmission plan that delivers regional value while meeting near-term system needs.

Regional transmission solutions, or Multi Value Projects (MVPs), meet one or more of three goals:

- Reliably and economically enable regional public policy needs
- Provide multiple types of regional economic value
- Provide a combination of regional reliability and economic value.²

In its 2014 IRP, Ameren Missouri characterized the MVP process in stating “[t]he overall planning process can be described as a combination of ‘Bottom–Up’ projects identified in the individual MISO Transmission Owners transmission plans which address issues more local in nature and are driven by the need to safely and reliably provide service to customers, and

¹ ATXI’s response to Staff Data Request 0001.

² Home>Planning>MISO Transmission Expansion Planning (MTEP)>Multi Value Project Portfolio Analysis” <https://www.misoenergy.org/PLANNING/TRANSMISSIONEXPANSIONPLANNING/Pages/MVPAnalysis.aspx>.

projects identified during MISO's 'Top-Down' studies, which address issues more regional in nature and provide economic benefits or address public policy mandates or goals.”³

This transmission segment, in combination with other MVPs, promotes the integration of wind energy into Missouri that would assist Missouri utilities in meeting their Renewable Energy Standard requirements.⁴ Additionally, this segment will mitigate potential transformer and transmission overload conditions in the Palmyra, Missouri region, therefore improving the reliability of Missouri's grid.⁵ The overall cost-benefit ratio for the MVP portfolio, which includes other transmission segments, was estimated to be in a range of 2.0-2.9 for the Missouri local resource zone.⁶ However, a required triennial review of this project in 2014 increased the projected cost-benefit ratio to 2.3-3.3 for the Missouri local resource zone.⁷

Based on discussions with ATXI and several landowners that will be affected by this project, Staff concludes that ATXI has conducted a public outreach program for this project that has resulted in all of the easements being acquired. Specifically, in response to Staff Data Request 0014, it stated that “ATXI has acquired all (100%) private property easements for the Missouri portion of the Illinois Rivers Project.” In addition, in response to Staff Data Request 0022, ATXI described its policies regarding land and landowners. The response to Data Request 0022 has been attached to this Memorandum.

In the Tartan Energy Company case, the Commission's Order listed five criteria to include in the consideration when making a determination on whether a utility's proposal meets the standard of being “necessary or convenient for the public service” (A short description of how Staff believes each criteria has been met is also included):

- Is the service needed? (The earlier discussion regarding MISO and local reliability needs addresses the need for this project.);
- Is the applicant qualified to provide the service? (ATXI is an affiliate of Ameren Corp. , has been in business for over nine (9) years, and has access to Ameren Services, which also provides expertise to Ameren Missouri.);
- Does the applicant have the financial ability to provide the service? (ATXI intends to finance the Project using a combination of equity, short-term and long-term debt, and cash from operations.);
- Is the applicant's proposal economically feasible? (As part of the MISO's MVPs, ATXI has a reasonable opportunity to recover its costs through its FERC approved tariffs.); and

³ Ameren Missouri 2014 IRP, Chapter 7. Transmission and Distribution NP, p. 2, File No. EO-2015-0084.

⁴ Application, p. 5.

⁵ ATXI's response to Staff Data Request 0019.

⁶ MISO. (2014). “MTEP 14 Triennial Review: A 2014 review of the public policy, economic, and qualitative benefits of the Multi-Value Project Portfolio.”

<https://www.misoenergy.org/Library/Repository/Study/Candidate%20MVP%20Analysis/MTEP14%20MVP%20Triennial%20Review%20Report.pdf> (08APR2015). p. 8.

⁷ MISO. (2014). “MTEP 14 Triennial Review: A 2014 review of the public policy, economic, and qualitative benefits of the Multi-Value Project Portfolio.”

<https://www.misoenergy.org/Library/Repository/Study/Candidate%20MVP%20Analysis/MTEP14%20MVP%20Triennial%20Review%20Report.pdf> (08APR2015). p. 8.


- Does the service promote the public interest?⁸ (Factors that Staff maintains promotes the public interest include, but are not limited to, the approval of the project as a MISO MVP, improvement of local reliability, and ATXI's landowner program which secured all of the private easements needed for this 8 mile segment.)

However, as a condition of granting the requested CCN, Staff recommends that the Commission require ATXI to use the policies explained in Data Request 0022 for the Missouri portion of the Illinois Rivers Project. Staff would note that conditions regarding landowners and land management have been required in the past. For example, in Case No. EO-2002-351, the Commission ordered that AmerenUE follow certain construction, clearing, maintenance, repair, and right-of-way practices regarding landowners and land management for Union Electric Co.'s proposed Callaway-Franks Transmission Line.

SUMMARY

Staff has reviewed the filing and information obtained through prior discussions with ATXI as well as discovery conducted as part of this matter. In this Application, ATXI is requesting and Staff supports the issuance by the Commission of a CCN to own, acquire, construct, operate, control, manage and maintain certain electric plant consisting of existing electric transmission and distribution facilities within Marion County, Missouri, and an associated switching station near Palmyra, Missouri, because these transmission facilities are beneficial to the reliability of electric service to retail customers in Missouri and the larger MVP portfolio will add further reliability of electric service and other benefits to retail customers in Missouri and elsewhere. Staff's support is based on the condition that ATXI agrees to follow the policies outlined in Data Request 0022 regarding landowners and land management. Staff also supports ATXI's request for a waiver from certain filing requirements identified above. The requested waiver would be consistent with other waivers granted to electric corporations that have facilities in Missouri but do not directly serve Missouri retail customers.

⁸ In the Matter of the Application of Tartan Energy Company, LLC, d/b/a Southern Missouri Gas Company, 3 Mo P.S.C. 3d 173, 177 (1994). See also Section 393.170, RSMo (2000).


Notary Public

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 in Marion)
County, Missouri and an Associated)
Substation near Palmyra, Missouri)

Case No. EA-2015-0145

AFFIDAVIT OF SARAH L. KLIETHERMES

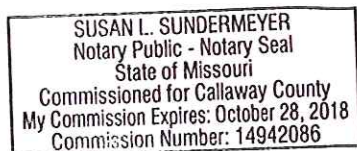
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Sarah L. Kliethermes, of lawful age, on oath states: that she participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.



Sarah L. Kliethermes

Subscribed and sworn to before me this 20th day of April, 2015.





Notary Public

Ameren Transmission Company of Illinois's
Response to MPSC Data Request

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 in Marion County, Missouri, and an Associated Substation near
Palmyra, Missouri.
Data Request

Data Request No.: MPSC 0022 - Dan Beck

The Staff understands that ATXI has all necessary easements.
Please provide-identify ATXI's transmission facilities practices during
and after construction respecting: (a) frequency of contact with
landowners; (b) treatment of easement land, trees, vegetation, and
property, such as fences, gates, irrigation facilities, electronics; (c)
seeding of construction areas; (d) use of herbicides; (e) maintenance
of insurance; routine maintenance-repair; (f) major outage; (f) and
clean-up regarding construction, routine maintenance-repair, or major
outage? If ATXI doesn't have such practices, does it plan to develop
such practices and when? DR requested by Dan Beck
(dan.beck@psc.mo.gov)

RESPONSE

Name: Jeff Hackman
Title: Senior Director Transmission Operations, Engineering, Asset Management
Date: April 2, 2015

(a) frequency of contact with landowners;

During: landowners are contracted 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 AMS
real estate employee or contractor to contact if they have any questions or concerns.

After: landowners are contacted after construction to settle crop, land restoration, or other
damages.

(b) treatment of easement land, trees, vegetation, and property, such as fences, gates, irrigation
facilities, electronics;

ATXI is responsible for damages caused to the easement land resulting from the construction
of the transmission line. ATXI settles damages with the landowners after construction is
complete.

ATXI works with landowners on the disposition of the trees and vegetation that are cleared.
Trees and vegetation are either windrowed, chipped and spread on the easement, or removed

from the property. In some cases landowners request and ATXI agrees that certain sized timber be stacked for use by the landowner as firewood.

ATXI is responsible to reinstall any fences or gates taken down during construction. If gates and fences are damaged, ATXI is responsible for the cost of repairs. On a case by case basis, ATXI works with the landowner and will install gates in fences for access to minimize the impact on pasture land and livestock.

With respect to irrigation facilities, ATXI attempts to select routes and pole placements that minimize or mitigate the impact on irrigation facilities. If modification to an existing irrigation system are required because of the transmission line, then ATXI on a case by case basis, will compensate the landowner for the cost of the modification and the damage associated with such modification.

With respect to electronics, if the landowner experiences interference that is caused by the operation of the transmission line, then AMS's engineering department will investigate on behalf of ATXI to mitigate the cause of the interference.

(c) seeding of construction areas

During and after construction, ATXI will work with landowners to prevent or correct excessive erosion on all lands disturbed by construction by implementing reasonable methods to control erosion, including the seeding of construction areas.

(d) use of herbicides

During Initial Clearing Activities:

Herbicide treatment all of trees, brush, vines, or stumps shall be used unless otherwise specified by ATXI (i.e. stumps in restricted areas). Herbicide must be applied within 24 hours of cutting. Only EPA registered herbicides will be allowed. Note: Tordon herbicide or any herbicide with Picloram as the active ingredient is not to be used on ATXI property or ROW's.

All stumps shall be treated with an approved herbicide in accordance with the manufacturer's label. The method of application and the herbicide(s) utilized shall be recommended by the contractor, but shall be approved by the AMS Transmission Vegetation Management department on behalf of ATXI. The contractor will submit an "Ameren Outside Contractor Pesticide Use Request" form for all herbicides, surfactants, or other additives to be used. Soil sterilants are not to be used on ATXI property or ROW's. Herbicides will not be used until this form has been approved.

In areas on the ROW where clearing has been completed by others and live tree stumps were left higher than 3 inches, the contractor shall recut to 3 inches or less and treat with the approved herbicide.

The contractor shall comply with all requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Pesticide Control Act and National Pollution Discharge Elimination System (NPDES) of Missouri, Illinois, Iowa, or other states, as applicable to the location of the clearing work, regarding permitting, record keeping including required NPDES forms, certification of applicators and the control and application of herbicides.

All spill response must be in accordance with applicable regulations. Initial spill response should include measurements to localize the spill impact via containment and notification of

appropriate AMS Environmental Services staff on behalf of ATXI by calling the Ameren Spill Hotline. Initial notification must be made immediately.

During Maintenance Activities:

Contractors utilize Low Volume Foliar (LVF), basal and stump application.

Contractor shall treat right-of-ways in a chemical manner as per ATXI specifications. ALL HERBICIDE MIXES MUST BE APPROVED BY AMS on behalf of ATXI in writing via the Contractor Pesticide Use Request Form. (Note: Tordon Herbicide or any herbicide with Picloram as the active ingredient is not to be used on ATXI property.)

All chemicals used must be registered by the Environmental Protection Agency (EPA) and other appropriate governing regulatory agencies.

HERBICIDE APPLICATION

- a) All trees and woody brush less than Priority Status height shall be treated within the wire zone of the right-of-way.
- b) The wire zone shall be defined as the area directly under the conductors and 20 feet beyond either side of the outside conductor.
- c) Buffer zones of species where their mature height would be less than 20 feet tall shall be left outside the wire zone. Examples would be flowering dogwood, red bud, sumac, American Plum, etc.
- d) Species that would reach a mature height greater than 10 feet shall be treated within the wire zone.
- e) All forbes, grasses, legumes, wildflowers and nonwoody types of vegetation are not to be treated. All cultivated berry bushes, ornamental shrubs, fruit trees and yard trees are not to be treated except under specific instructions of the Ameren representative. All applications shall be made in a manner as to not adversely affect these plant species.
- f) All vines growing on any structure or hardware shall be severed and the stump treated with herbicide. Any loose or dangling portions reachable from the ground shall be removed.
- g) No aerial applications shall be made.
- h) All herbicides used shall be approved by AMS on behalf of ATXI.. (See Outside Contractor Pesticide Use Request Form 4567N.)
- i) Contractor shall be liable for all claims including, but not limited to, damage to adjacent landowners property due to over-spray, runoff, or improper application methods that may arise as a result of their work.
- j) Any brush greater than Priority Status height and with less than 30 feet clearance shall immediately be brought to the attention of the AMS representative verbally, and the location shall be marked on the map and submitted to the AMS representative.

k) The AMS representative is to be notified of any applications that are required in a “wetlands type environment”. Only herbicides labeled specifically for use in “wetland areas” shall be applied.

l) Brush along areas such as roadways, fences and railroad ROWs that, if treated, could fall and cause a public hazard, shall not be treated. These areas are to be clearly marked on the map, noted on the Circuit Notes form and submitted to the AMS representative.

CUSTOMER CONTACT

a) Landowners are to be notified in advance of application, in writing, of contractor’s intent to apply herbicides on their property. AMS will review and approve this letter/postcard before it is sent.

b) Contractor shall send notifications no less than 14 days and no more than 90 days in advance in Missouri. The AMS representative shall be notified prior to making any applications on such properties where notification cannot be confirmed or concerns expressed.

c) In the interest of good customer relations, contact should be made, wherever possible, before the crew enters the property.

(e) maintenance of insurance; routine maintenance-repair; (f) major outage

As with all transmission and distribution facilities, coverage is subject to terms and conditions of the corporate property insurance policy. The policy covers property insured against all risks of direct physical loss or damage unless otherwise excluded. Lines, including poles, towers, conductors, pole mounted transformers, etc. are excluded outside of a 1,000 feet of a plant/substation. Non-generating assets are subject to a \$2 million deductible.

(f) and clean-up regarding construction, routine maintenance-repair, or major outage?

Our practice after construction work related to routine maintenance-repair or major outage is to remove all construction debris and return the property to as near to as-found conditions as possible.