

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 25, 2016

Jefferson City, Missouri

Volume 5

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) File Number
Necessity Authorizing It To Construct,) EA-2015-0146
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)

RONALD D. PRIDGIN, Presiding
SENIOR REGULATORY LAW JUDGE
DANIEL Y. HALL, Chairman
STEPHEN M. STOLL
WILLIAM P. KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
COMMISSIONERS

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PROCEEDINGS

(Exhibit Numbers 1 through 34 were marked for identification by the court reporter.)

JUDGE PRIDGIN: Good morning. We are on the record. This is the evidentiary hearing in Case Number EA-2015-0146 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.

I am Ron Pridgin. I am the regulatory law judge assigned to preside over this hearing. We are holding this hearing in the Governor Office Building in Jefferson City, Missouri. The time is approximately 8:45 in the morning. It's January 25th, 2016.

If I could get oral entries of appearance from Counsel, please, beginning with ATXI.

MR. LOWERY: Thank you, Your Honor. James B. Lowery and Michael R. Tripp with the law firm of Smith Lewis, LLP, P.O. Box 918, Columbia, Missouri, 65205 on behalf of ATXI.

1 JUDGE PRIDGIN: Mr. Lowery, thank you.

2 Mr. Tripp, thank you.

3 On behalf of Staff, please.

4 MR. LOWERY: Your Honor, we have a couple
5 of other entries as well.

6 JUDGE PRIDGIN: I apologize. I'm sorry,
7 go ahead.

8 MR. ROSENCRANTS: No problem. Jeffrey
9 K. Rosencrants, along with Ed Fitzhenry and Eric
10 Dearmont, on behalf of Ameren Transmission Company of
11 Illinois, P.O. Box 66149.

12 JUDGE PRIDGIN: All right. Thank you.
13 On behalf of the Staff of the Commission, please.

14 MR. WILLIAMS: Kevin Thompson, Steven
15 Dottheim, Mark Johnson, Jamie Myers, Jacob Westen,
16 Hampton Williams, and Nathan Williams are appearing on
17 behalf of the Staff of the Missouri Public Service
18 Commission, P.O. Box 360, Jefferson City, Missouri,
19 65102.

20 JUDGE PRIDGIN: Mr. Williams, thank you.
21 On behalf of Public Counsel, please.

22 MR. OPITZ: Thank you, Judge. For Public
23 Counsel, I'm Tim Opitz, P.O. Box 2230, Jefferson City,
24 Missouri 65102.

25 JUDGE PRIDGIN: Mr. Opitz, thank you.

1 On behalf of MISO, please.

2 MR. SMALL: Your Honor, on behalf of
3 MISO, Jeffrey L. Small, 720 Carmel Drive, Carmel,
4 Indiana.

5 And Your Honor, I'd like to make a small
6 correction in our Motion Pro Hac Vice, my name was
7 inadvertently misspelled, which was carried through
8 into your Order, your entry granting the motion. So
9 the correct spelling is Small, S-m-a-l-l, without the
10 S. We have additional counsel to put on appearance as
11 well. Thank you.

12 JUDGE PRIDGIN: Thank you.

13 MR. HARDEN: Thank you, Your Honor.
14 Joshua Harden with Dentons Law Firm at 4520 Main
15 Street, Kansas City, Missouri 64111, representing
16 midcontinent ISO.

17 JUDGE PRIDGIN: Mr. Harden, thank you.
18 On behalf of United for Missouri, please.

19 MR. LINTON: Good morning, Your Honor.
20 On behalf of United for Missouri, David Linton, 314
21 Romaine Spring View, Fenton, Missouri. Thank you.

22 JUDGE PRIDGIN: IBEW?
23 Appearance for Neighbors United, please.

24 MS. HERNANDEZ: Good morning. Jennifer
25 Hernandez and Art Hernandez with Hernandez Law Firm,

1 LLC, our address is 1802 Sun Valley Drive, Jefferson
2 City, Missouri 65109, appearing on behalf of Neighbors
3 United against Ameren's power line. Thank you.

4 JUDGE PRIDGIN: Thank you. Have I
5 overlooked anyone? All right. Anything before we
6 proceed to opening?

7 MR. LOWERY: Your Honor, I wanted to
8 inquire of the Commission. We filed a request on
9 Friday to ask the Commission to take up and deal with
10 the four motions to strike that we had filed last week.
11 The reason we, despite the notice that you had issued,
12 had brought that up is that we were concerned about the
13 practical problems that we felt would exist if
14 testimony that ultimately was going to be properly
15 found objectionable and stricken was stricken after the
16 evidentiary record was made.

17 A couple of issues with that. One of the
18 issues is that if the -- if the testimony and some of
19 the schedules are going to come in, sort of on a
20 conditional basis subject to those motions, then there
21 will probably be additional cross-examination, there
22 may be redirect based on that cross-examination. Then
23 we have a situation where a record's being made that's
24 essentially based on testimony that shouldn't have been
25 in.

1 After the hearing's over, the concern is
2 then we're going to have to unwind that, depending on
3 what the Commission's ruling is, which could delay
4 briefing and certainly makes it cumbersome for the
5 Commission and the parties to deal with. So I guess
6 effectively, we're asking you to reconsider the notice
7 that you had given and to go ahead and take up those
8 motions to strike.

9 We think that it's very clear that there
10 are significant foundational hearsay problems that are
11 common to most of them. There's a couple of other
12 things, and to take them up and rule on them so that we
13 can have a cleaner record and a more efficient process.
14 And obviously, that's up to you, but I'm suggesting to
15 you to consider doing that because of these practical
16 concerns that we're concerned about.

17 JUDGE PRIDGIN: Mr. Lowery, thank you.
18 And I've certainly heard your comments and read over
19 your motion, but I'm going to deny them so we take
20 those objections with the case.

21 Anything further before we go to opening?

22 MR. LOWERY: Your Honor, if I could just
23 clarify, you're going to take the objections with the
24 case, meaning that the -- well, let me just ask you
25 from a process perspective. Do we need to renew those

1 objections to the pre-filed testimony on the record or
2 to oral testimony that may be elicited based on that as
3 we go forward, or will you just simply treat those as
4 standing objections and then after the hearing's over,
5 you will take those up and deal with the record as need
6 be?

7 JUDGE PRIDGIN: I'll be glad to treat
8 those as standing objections. You don't need to orally
9 raise them again. You certainly can if you want to,
10 just to remind me, but you don't have to. You've made
11 your record with your written motion.

12 MR. LOWERY: Okay.

13 JUDGE PRIDGIN: It will be subject to
14 those objections.

15 MR. LOWERY: And the same thing would
16 apply to if you do sustain in whole or in part some of
17 those and we have transcript -- we have live testimony
18 that essentially was the fruit of those, the objection
19 to that testimony is preserved by the filing of those
20 motions as well?

21 JUDGE PRIDGIN: Correct.

22 MR. LOWERY: All right. Thank you for
23 the clarification.

24 JUDGE PRIDGIN: You're welcome. Anything
25 further?

1 MS. HERNANDEZ: Yes, Your Honor.

2 JUDGE PRIDGIN: Ms. Hernandez.

3 MS. HERNANDEZ: I would just like to
4 bring up a few motions that we had filed and renew
5 those at this time for the record. The first one being
6 our Motion to Dismiss that was filed, I believe in
7 October. The two points being respectfully that this
8 Commission does not have the authority to decide the
9 Constitutional issues in this case. Those being the
10 taking of property that this transmission line will be
11 routed across. Second is the -- that the Commission
12 cannot rule in this case because ATXI has failed to
13 show that they have the County Commission authority or
14 assents necessary to route this line over the roads in
15 each county. ATXI has still failed to make that
16 showing and I would raise that issue at this time, as
17 well as our Motion to Stay the Evidentiary Hearing
18 based on our sunshine request.

19 Again, for the record, we made a good
20 faith request that we believe the Commission has
21 documents in its possession that would be relevant to
22 this case. I made that on a good faith basis that
23 those documents do exist. I made it when I made it
24 because of my recollection in preparing for the
25 hearing, so I would like to renew those two motions at

1 this time.

2 JUDGE PRIDGIN: Well, your Motion to
3 Dismiss is denied. The motion to deny -- excuse me,
4 the Motion to Stay the Evidentiary Hearing is also
5 denied. Anything further before opening?

6 MR. LOWERY: Very briefly, Your Honor. I
7 did forget something. I sent an e-mail to Your Honor
8 and to the parties last week indicating that
9 Dr. Bailey, because of the two-plus feet of snow, was
10 unable to get here today and we suggested that he be
11 taken tomorrow and then we suggest we move Mr. Endorf
12 from tomorrow to today, assuming we can get there, and
13 put him before Mr. Hackman to sort of -- and I didn't
14 hear any objection from anybody. I assume that's okay
15 with Your Honor.

16 JUDGE PRIDGIN: That's certainly fine
17 with me. All right. Anything further before opening?
18 All right. Mr. Lowery or whoever is doing the opening
19 for your side.

20 MR. LOWERY: Thank you, Your Honor.

21 JUDGE PRIDGIN: You're welcome.

22 MR. LOWERY: Good morning. And may it
23 please the Commission. My name is Jim Lowery, and I
24 along with Mike Tripp, as well as Jeff Rosencrants, Ed
25 Fitzhenry, and Eric Dearmont are representing ATXI in

1 this certificate of public convenience or necessity
2 case.

3 And it involves a project called the Mark
4 Twain transmission line project. So what is the
5 project? The Mark Twain project consists of
6 approximately 95 miles of new 345 kV transmission line
7 which starts at a new switching station called Maywood
8 in Marion County, Missouri. The Maywood switching
9 station is part of the Illinois Rivers project, which
10 is -- consists of about three of the 17 MVP projects
11 that have been approved by MISO, and I'll talk about
12 MVPs more in a moment.

13 And you actually approved the Missouri
14 portion of the Illinois Rivers project, I believe it
15 was back in June when you granted a CCN for that
16 project. The Mark Twain line moves from the
17 interconnection with Maywood to the west and where it
18 will interconnect with a new 345 kV substation to be
19 called the Zachary substation, and that's going to be
20 near Kirksville. And then it proceeds to the Iowa
21 border where it will interconnect with an MVP project
22 that is being constructed in Iowa by Mid-American
23 Energy.

24 The project also consists of
25 approximately two miles of 161 kV connector that

1 connects that Zachary substation to the existing Ameren
2 Missouri Adair substation near Kirksville. And that
3 connection provides an additional source of supply to
4 the Ameren system that doesn't exist today, and it
5 fully resolves some reliability issues that exists in
6 northeast Missouri that Ameren Missouri would otherwise
7 have had to address if the project were not built.

8 The line also on its stretch from
9 Kirksville north, it runs through an energy zone MISO,
10 and we'll talk about this as the case goes on, MISO
11 identified a number of energy zones throughout its
12 footprint and those energy zones drove in a significant
13 part the routing and location of the transmission
14 lines. And in that energy zone exists significant and
15 high-quality wind resources in the north part of
16 Missouri and ATXI witness Vosberg will talk about those
17 in his testimony.

18 Now, having described the physical nature
19 of the project, let me talk a little bit about the kind
20 of case that's before you. This is a CCN case, a
21 Certificate of Public Convenience or Necessity case.
22 And this case is what has long been referred to at the
23 Commission as a line certificate case that arises under
24 subsection one of the CCN statute 393.170.

25 This is not an area certificate case. In

1 an area certificate case, you have a load-serving
2 entity that has end-use customers come in and ask you
3 to certify a geographic area that allows them to
4 construct their facilities in that area and also
5 obligates them to serve all those customers as well as
6 give them the right to do so.

7 ATXI is not that kind of company. ATXI
8 is a transmission-only company, a transmission service
9 company that provides transmission service under a
10 FERC-approved tariff to load-serving entities and other
11 users of the system, including, for example, Ameren
12 Missouri. That's why it's agreed in this case that
13 ATXI need not file rate schedules, need not file
14 depreciation studies because you won't be setting
15 ATXI's rate.

16 So how did this case -- how did this
17 project come about? As explained in the details in the
18 pre-filed testimonies of ATXI witnesses Maureen
19 Borkowski and Dennis Kramer, and also by MISO witness
20 Jami son Smith, the Mark Twain line was developed
21 through the MISO transmission expansion process, which
22 is part of its tariff. It's part of a FERC-approved
23 transmission planning process in the tariff. It goes
24 by MTEP for short.

25 MISO, through its ongoing, open, and

1 transparent stakeholder process which includes active
2 participation by utilities, by state regulators, by
3 state consumer advocates like OPC, by utilities, power
4 producers and others, including for example the
5 organization of MISO states in which this Commission
6 has long been an active participant, examine, modelize,
7 and otherwise analyze the current near, intermediate,
8 and long-term needs of the transmission system and how
9 those relate to the operation of the energy markets
10 that regional transmission organizations like MISO
11 operate with the design to ultimately ensure
12 reliability service to end users and the most efficient
13 and economical use of the transmission system.

14 Some of those laws are, for example, renewable energy
15 standards like we have in Missouri, like I think exists
16 in all of the MISO states, and most recently, the US
17 EPA's Clean Power Plan which became law in June of last
18 year.

19 Now, through the NTEP process starting in
20 around 2008, MISO developed a portfolio of 17 new 345
21 kV projects, and those projects are called multi-value
22 transmission line projects, MVPs as I referenced
23 before. Sometimes the 17 projects together are called
24 the MVP portfolio.

25 As Messrs. Kramer and Smith explain, the

1 projects are called multi-value because they are
2 specifically designed to provide value to the
3 transmission system and the operation of the markets in
4 multiple ways. To qualify as an MVP, you must meet
5 three criteria. First the project must be designed to
6 deliver bulk power economically and reliably in support
7 of state or federal mandates or policies, like
8 renewable energy standards, like the Clean Power Plan.
9 Another criteria is that the project's benefits must
10 exceed the cost; and finally, the project must address
11 at least one NERC, that stands for North American
12 Reliability Corporation. NERC has been delegated by
13 the FERC responsibility to ensure their reliability of
14 the transmission system in the country, and must
15 address at least one NERC reliability issue.

16 MISO has determined through its
17 stakeholder and its NTEP process that the MVP
18 portfolio, each of the projects meet those criteria.
19 That includes the Mark Twain project and the portfolio
20 as a whole has significant benefits in excess of its
21 costs.

22 Those benefits have been demonstrated in
23 multiple ways at multiple time. In late 2011, MISO
24 issued its initial MVP report that approved the MVP
25 portfolio. At that time, the analyses showed overall

1 cost benefit ratios ranging from 1.6 to 3.3 times the
2 benefits over costs, including ratios for Missouri
3 specifically of 1.8 to 3.2 times benefits over costs.
4 That's from the 2011 analysis.

5 And then in 2014 as required by MISO's
6 tariff, MISO updated those analyses in what was called
7 its triennial review and the costs -- or the benefit
8 cost ratios improved to 1.8 to 4.5 benefits over cost
9 overall and for Missouri, 2.3 to 3.3 times the benefits
10 over costs.

11 Now, these benefits are driven by a
12 number of factors, including lower production cost per
13 load-serving entities in MISO, savings due to reduced
14 capacity reserve margins. There's a cost to keeping
15 capacity in reserve, savings due to reduce transmission
16 line losses, and savings due to the ability to utilize
17 additional low-cost wind energy that is enabled by
18 these projects, among other things.

19 Now, thus far, I've been talking about
20 the overall benefits from the project itself. But in
21 this case, ATXI is presenting a specific analysis from
22 Dr. Todd Schatzki, which determines the benefits to
23 Missouri specifically arising from the Mark Twain line.

24 And what he did was he looked at -- he
25 looked at the projects with Mark Twain in service and

1 all of the other MVPs in service, and with Mark Twain
2 not built and all of the other MVPs in service, and
3 incidentally his assumption that all the other MVPs
4 would be in service is a good one because only this
5 project and one segment in Wisconsin of the 17 MVPs
6 have any further state regulatory approvals pending and
7 some of these projects, many of them, are already under
8 construction.

9 What Dr. Schatzki's analysis shows is the
10 Mark Twain project is the lynch pin of the MVP
11 portfolio. And that's because you've got the 345
12 kV system to the north and the west of Missouri in
13 MISO, including new MVPs. You've got the 345 kV system
14 to the east and also northeast of Missouri, including
15 new MVPs, and this project is the one that ties those
16 together. And that includes the Illinois Rivers
17 project that I mentioned a minute ago.

18 Because of the importance of the project
19 and its location as effectively the link to the
20 interstate highway, if you could analogize to that,
21 Dr. Schatzki's analysis indicates that the benefits to
22 Missouri of Mark Twain are at least 24 times its cost,
23 and as much as 68 times its cost, and that depends on
24 which essentially economic scenario you look at, is it
25 business as usual, is it high growth, is it low growth.

1 The low growth would be the 24 times. So while the
2 portfolio's beneficial overall, this project is even
3 more beneficial to Missouri.

4 In this regard, it's important to note
5 that Ameren Missouri mostly, the city of Columbia to a
6 small extent because the city of Columbia is also a
7 MISO member in Missouri, will pay under the filed rate
8 doctrine is going to pay approximately 8 percent of the
9 transmission charges for the entire portfolio, which is
10 going to cost about \$5.5 to \$6 billion, regardless of
11 whether or not Mark Twain were built. Mark Twain's
12 about \$224 million of that number.

13 So let's talk a little bit about the
14 construction of the line itself. Unlike most of the
15 transmission lines that we're all familiar with in the
16 state, which consist of H frames, generally two 80-to
17 100-foot tall wood poles, sometimes with guide wires or
18 steel lattice towers, this transmission line is going
19 to be built using steel monopoles that sit on a
20 foundation.

21 ATXI witness, Doug -- this is Doug Brown
22 and David Endorf, talk about this monopole design in
23 their testimony. Mr. Brown includes some photos in his
24 testimony, and I'd like to show you a couple of them.
25 They look a lot better on -- that is if the screen

1 comes to life here -- technology is failing me, Judge.

2 So let me show you a couple of them and
3 these are -- these are part of Mr. Brown's testimony.
4 The first one -- this is exactly what this line
5 consists of, what it's going to be constructed with.
6 It's going to look essentially exactly like that using
7 the same kind of structures.

8 You can see -- you can see that the base
9 of these structures is between 8- and 10-, 12-foot in
10 diameter at the most, and you can see this is a pasture
11 that -- you can see that you can hay, you can graze
12 cattle, you can do just about anything pretty much
13 right up to the base of the poles with this particular
14 structure. Whereas when you have the H frames and
15 lattice towers, you have significantly more
16 interference.

17 This is, and it's a little harder to see,
18 but this is a shot of the same kind of line and this is
19 -- I think those are soybeans. But this shows the
20 compatibility of the line with row cropping operation.
21 Again, you can essentially till very near the base of
22 these structures.

23 The company -- the company chose the
24 design in large part because it does mitigate to the
25 maximum extent possible the interference that you have

1 with some interference with land use that you have from
2 any transmission line. To point to just one statistic
3 relating to this, if you take the area of the bases and
4 some area around it, because you can't literally touch
5 the concrete essentially, and you do the math in terms
6 of the amount of land actually taken off production on
7 the entire 95-mile stretch, it amounts to less than an
8 acre of land.

9 The evidence will show that all of the
10 parties before you, except one, and that includes the
11 Staff, includes Public Counsel, are recommending that
12 the company's application be approved so that the
13 project can be built. As outlined in our position
14 statement, we do have a legal difference of opinion,
15 not a difference of opinion on the merits of the
16 project, with the Staff that effects one of the Staff's
17 seven recommended conditions, but as to all of the
18 other six conditions that the Staff recommended, those
19 have been fully resolved between the company and the
20 Staff.

21 So as we stand here today, there's really
22 no issue between the Staff and the company and any
23 party except one as to whether or not the project is
24 necessary or convenient for the public service, whether
25 or not the Tartan factors that you typically rely upon

1 to support issuance or approve the application.

2 The opposing landowners, which call
3 themselves Neighbors United against Ameren's power
4 line, that was a group that was formed about a month
5 after the public outreach process in this case, when
6 this project started, have raised a myriad of
7 speculative, unsupported concerns in the hopes of
8 stopping the line.

9 But the evidence shows that these
10 concerns are unsubstantiated and that in the end,
11 respectfully, what the neighbors are really asking to
12 you do is elevate their interest, their perceived
13 interest over the larger public interest as a whole.

14 As a statewide public utility commission
15 charged with, among other things, taking steps to
16 ensure that the utility service in the state is
17 reliable, that our systems meet our needs today and in
18 the future, your role is primarily to look at the
19 interest of the public as a whole.

20 Landowners often oppose particularly
21 major utility infrastructure projects. We saw that in
22 the Labadie utility waste landfill case a couple years
23 ago, when over strenuous objections of landowners you
24 granted a CCN. We've seen it in other cases, but if
25 you look at your decisions, you look at court cases,

1 it's clear that the interest of individual landowners
2 in the area of the project are subservient to the
3 interest of the public as a whole.

4 Not only are the claims of the neighbors
5 unsubstantiated, but most of the bases that they rely
6 upon are either totally outside the scope of this
7 Commission's real task here, that is is the improvement
8 worth the cost, that's really the question before you,
9 or they are at least at the periphery of the heart of
10 the things you look at.

11 I'll acknowledge that you do and you have
12 and you can look at environmental-related issues, for
13 example, or wildlife issues. You've done that, but
14 your decisions make clear that that's not at the core
15 of the inquiry that you make, that's not the core of
16 the factors that lead to your decision-making because
17 there's other agencies that really are charged with
18 those areas.

19 Now, there's no question that
20 transmission requires construction and there's no
21 question that easements have to be obtained in order to
22 construct a transmission line. There's definitely no
23 question that some landowners would rather not be
24 impacted by the line. We completely understand that.
25 I have no doubt that you understand that. But that has

1 always been true. It was true when the roughly 4,000
2 miles of high-voltage transmission line that already
3 exists in Missouri were built in the 20th Century, it
4 was true when the interstate highway system was built,
5 it's always been true and I think it probably will
6 always be true.

7 The evidence will show that the
8 neighbors' arguments, among them are there just won't
9 be anymore need for wind power, we're not going to
10 build anymore wind in the Midwest, that solar panels on
11 rooftops and parking lots will solve all of the
12 problems, that the rural way of life will effectively
13 cease to exist if this project were built, that MISO is
14 completely wrong and its analyses are wrong, that
15 Dr. Schatzki's analysis are wrong, that the Staff is
16 wrong for supporting the project, that the other public
17 utility commissions have approved essentially all the
18 other MVPs have been wrong. The evidence will show
19 that those claims are simply incorrect and I encourage
20 you to ask our witnesses about those claims as the case
21 proceeds.

22 Now, before I sit down, I'd like to go
23 back to the one issue I eluded to a minute ago and that
24 is this legal disagreement that we have with the Staff
25 about one condition. The Staff takes the position that

1 assents from counties to allow ATXI to hang wires
2 across the roads, county roads, and just to be clear,
3 in this case, that's all that ATXI will be doing.
4 We're not building along county roads, we're not even
5 putting a single structure in a public right-of-way.
6 There will be a conductor hanging across county roads
7 where they must be crossed.

8 Staff takes the position that assents
9 from each county must be obtained before we start
10 construction, at least before we start construction in
11 a given county, or before we start construction on a
12 road crossing. That's a legal difference of opinion.
13 It's purely a legal difference of opinion. We don't
14 have a substantive disagreement with the Staff in this
15 case.

16 It's ATXI's position that the assents
17 which are the subject of the statute that Staff points
18 to, 229.100, which was enacted just as it is today 113
19 years ago, should not delay this Commission's
20 permission to construct the project. We believe Staff
21 is simply mistaken in arguing that it must -- the
22 assents must be obtained for at least three reasons.

23 First, we know in similar cases involving
24 transmission-only companies and involving transmission
25 line projects where county roads were crossed, that

1 this Commission did not in any way condition or limit
2 its permission to construct those projects based upon
3 county assents. The most recent example of that was
4 two years ago in the Transource Missouri case, which
5 was a 345 kV line from Kansas City up to I think in
6 northwest Missouri to Omaha, was an SPP project and it
7 was very much like this one. It arose out of SPP's
8 transmission expansion process, planning process.

9 Secondly, not only is the Commission not
10 made the effectiveness of its decision in analogous
11 cases depending on assents, but this is a subsection
12 one case. It's a line certificate case. And to the
13 extent a franchise requirement, and Staff says these
14 assents are franchises within the meaning of the
15 statute, to the extent they are franchises, that
16 requirement only exists in subsection two area
17 certificate case anyway. And that's not this kind of
18 case.

19 And finally, if you examine the PSC law,
20 and specifically the case law as a whole, it indicates
21 that even if there -- that even if there were no
22 distinction between a subsection one and subsection two
23 case, and I submit to you that there is, whatever may
24 be required under the assent statute is not a franchise
25 within the meaning of the Public Service Commission

1 law.

2 The bottom line is that this Commission
3 is not required to nor should it condition or limit its
4 permission to construct this line based upon what five
5 elected county commissions may or may not do in the
6 future.

7 We'll address these issues in
8 significantly more detail in our briefs. As I said,
9 it's a purely legal issue, but I thought it was
10 important that you understand the issue that's been
11 presented and what it would mean for the exercise and
12 effectiveness of your authority if, in fact, Staff was
13 correct about its position.

14 Now, as I wrap up my opening statement,
15 I'd like to leave you with three sort of overarching
16 things to keep in mind. First, everyone who has an
17 interest in improving the electric infrastructure in
18 the state and in the region in which your utilities
19 participate are recommending that you approve this
20 project's construction. Secondly, different analyses
21 performed at different points in time with different
22 levels of granularity all indicate the benefits of the
23 project are significantly more than the cost of the
24 project. And finally, the company has done what it can
25 in terms of designing the line to minimize impacts on

1 land uses. There's going to be some impact on the
2 transmission line to be sure, but we've done what we
3 can to minimize it.

4 I appreciate your patience and your
5 attention this morning. I know I speak for the lawyers
6 who are going to try the case with me and our witness
7 who are going to try do their best to provide you the
8 information you need in indicating that we look forward
9 to presenting the case to you. I want to thank you
10 very much.

11 JUDGE PRIDGIN: Mr. Lowery, thank you.
12 Mr. Chairman?

13 CHAIRMAN HALL: Good morning.

14 MR. LOWERY: Good morning.

15 CHAIRMAN HALL: You mentioned that there
16 were a number of prior cases before the Commission
17 involving line certificates where -- where the
18 Commission did not require county assents before
19 granting the CCN; is that correct?

20 MR. LOWERY: I know of two.

21 CHAIRMAN HALL: In either of those cases,
22 was the claim presented to the Commission that a --
23 that county assents were required before the CCN could
24 be granted?

25 MR. LOWERY: I don't believe that the

1 issue came up. And just to elaborate on that, I think
2 the reason there's only a couple of cases is
3 transmission-only entities, they're not very common and
4 they've come along as the electric industry sort of
5 evolved in the last 10 or 15 years.

6 CHAIRMAN HALL: Though -- which kind of
7 leads into another set of questions I had. If -- if
8 ultimately it is determined by the courts that this
9 Commission does not have jurisdiction over a
10 transmission-only companies, we would expect a lot more
11 of those, wouldn't we?

12 MR. LOWERY: I don't know that I can
13 answer that question. I think there's a lot of
14 transmission-only companies developing because of FERC
15 Order 1000 and other policies that are taking place in
16 the federal government.

17 CHAIRMAN HALL: Well, if -- if it's
18 determined that this Commission does not have
19 jurisdiction over -- over transmission-only companies,
20 wouldn't every -- every LSC in the state create a
21 wholly owned subsidiary and do transmission through
22 that wholly owned subsidiary, kind of like what
23 ATXI did?

24 MR. LOWERY: I don't know that I can
25 answer it. There's only three electric utilities in

1 the state, and frankly, two of those holding companies
2 already have holding companies, as you know.

3 CHAIRMAN HALL: Concerning the need for
4 -- for county assents, end of the day, that's going to
5 be a decision for -- for an Article III court, isn't
6 it? As you indicated, it's strictly a legal issue,
7 it's not a factual issue, there will be no deference
8 given to -- to the Commission's determination if it
9 were to make a determination of that issue. So at the
10 end of the day, it is an issue for the courts, isn't
11 it?

12 MR. LOWERY: Well, like any legal issue
13 that you have to resolve, as you make decisions, of
14 course if there's a challenge to your resolution,
15 ultimately the courts can second guess you about that,
16 that's true.

17 CHAIRMAN HALL: Yeah, but this is
18 different. If it's a legal determination within our
19 chapter, courts treat that differently than they would
20 a determination of whether these county assents are
21 required, wouldn't they?

22 MR. LOWERY: Well, I actually disagree
23 with that, because the question that you have to answer
24 is whether or not 393.170, whether -- A, whether or not
25 this kind of -- this assent under 229.100, whether or

1 not it is a franchise within the meaning of your
2 statute 393.170. You also have to make a determination
3 in terms -- and I -- in fact, I believe that the courts
4 would -- would certainly give the Commission some
5 deference, just like they did in Harline in 1961, you
6 had a practice for a long time in terms of how you
7 dealt with area certificates and line certificates and
8 what the court said is, that's informative of what the
9 statute means. I think the same thing would apply
10 here.

11 CHAIRMAN HALL: If we were to determine
12 that -- that a certificate was -- was appropriate in
13 terms of the Tartan factors, is there a reason why we
14 would need to determine the county assent issue? Could
15 we not condition the effectiveness of the CCN on an
16 ultimate determination that the assents were either
17 obtained or not required?

18 MR. LOWERY: I'm going to answer that
19 question by saying I will acknowledge you have probably
20 fairly broad discretion in terms of what conditions you
21 can impose, and whether ultimately you can impose that
22 condition or not, that ultimately would be up to an
23 Article III court as well, but I don't want to be
24 inconsistent with what I said. If you interpret your
25 statute in a way that suggests you can, then the

1 court's probably going to give deference and it's
2 probably the case that such condition would be upheld.
3 It's an open question because it's never happened.

4 CHAIRMAN HALL: I guess what I'm trying
5 to determine is our Order denying the Motion to Dismiss
6 back in November, we determined that -- that the
7 Commission may approve the CCN before assent of the
8 County Commission is shown while conditioning the
9 effectiveness of the CCN on the subsequent submission
10 of proof that the assents have been obtained. You
11 don't disagree with that statement, do you?

12 MR. LOWERY: I don't think that I do.
13 And I think what you're essentially saying is the
14 Commission can, and we would say that the Commission
15 absolutely should, the Commission ought to make the
16 public convenience or necessity determination, and all
17 Tartan does is give you tools to help you do that.
18 Tartan's not binding on you, but you use it to make
19 that determination. You're certainly not precluded
20 from deciding the case on the merits, and we don't
21 think you should in any way limit your decision on the
22 merits.

23 CHAIRMAN HALL: I assume in preparation
24 for this hearing, you spent some time looking at this
25 Commission's decision in the Clean Line case?

1 MR. LOWERY: I did.

2 CHAIRMAN HALL: How would -- and it's a
3 matter of record. I was not in the majority of that --
4 in that decision, but having said that, how do you
5 distinguish this case from the majority's decision in
6 the Clean Line case?

7 MR. LOWERY: Well, I think there's a very
8 important distinction, and I think perhaps there's
9 eluded to certainly an issue in that case. This
10 project, as I indicate -- I guess it's actually two of
11 17 MVPs that were developed through MISO's transmission
12 expansion planning process. That process was not a
13 process that was conducted in the dark. It's not a
14 process that even this Commission, at least indirectly,
15 wasn't involved in or other advocates. That process --
16 the process itself was developed through a stakeholder
17 process at MISO, then approved by the FERC, and then
18 the development of the MVPs and an examination of the
19 validity of the analysis and the triennial review and
20 so on, also was developed with input from a lot of
21 folks, including the OMS and other folks.

22 So what we have here is we have the
23 organization that is responsible for the functional
24 control of this integrated transmission system in the
25 MISO footprint that is responsible for improving the

1 efficiency of the MISO capacity and energy markets that
2 companies like Ameren Missouri transact in that has
3 looked at those issues and analyzed them under a wide
4 range of business cases.

5 This isn't just under a high-growth case
6 or low-growth case. It's under, I believe, four
7 different business cases that cover sort of the gambit
8 of what we would expect the economy and the electricity
9 markets to do. And we have analyses that then tell us
10 these projects and this project in particular are
11 beneficial overall, and they're beneficial to Missouri.

12 Clean Line, in their application, they
13 were essentially a merchant that says I plan to get
14 wind farms to -- to, you know, subscribe to my line,
15 and move power. There were no -- there was no
16 integrated process between -- across the footprint.
17 There was no cost benefit analysis of the same kind of
18 nature. And I think that is a very significant
19 distinction.

20 CHAIRMAN HALL: Is there any other way to
21 distinguish the two cases with regards to actual
22 provision of energy to Missouri consumers?

23 MR. LOWERY: Well, and I don't know the
24 details of what is the conversion station, I think is
25 what they called it, that Clean Line at one point in

1 that project indicated they might put in Missouri. The
2 difference is we have a networked AC system that all of
3 our load-serving entities, Ameren Missouri, everybody,
4 these co-ops and so on, rely upon. This improvement is
5 going to be a part of that networked AC system, and
6 that system is interdependent. When you make changes
7 on one part of it, you effect other parts of it.

8 That's why the line has reliability
9 benefits overall because you're strengthening the
10 system, you're making the highway system that is the AC
11 transmission system stronger when you add a line like
12 this. Clean Line was sort of a -- I guess I would call
13 it a private toll road going through, but it wasn't
14 really part of that integrated system that the
15 load-serving entities rely upon.

16 CHAIRMAN HALL: Okay. I'm jumping around
17 a little bit, but do you believe that the Right to Farm
18 Constitutional Amendment should in any way color our
19 determination in the public interest?

20 MR. LOWERY: No, I do not.

21 CHAIRMAN HALL: A Constitutional
22 amendment should not in any way shape how we view the
23 public interest?

24 MR. LOWERY: No, no, it shouldn't,
25 because for one thing, and I think you've already

1 concluded this, that Constitutional amendment does not
2 mean that infrastructure can no longer be built on
3 rural properties without the permission of the
4 landowners. And if it does mean that, then we've got
5 significant problems, not just ATXI, but every electric
6 gas, water utility, municipality, and so on.

7 Secondly, as you've also recognized,
8 eminent domain, you know, compensation for easements,
9 those types of things, that's not -- that's not,
10 frankly, for you to decide. You don't get into those
11 issues. You've indicated that you don't get into those
12 issues. And so --

13 CHAIRMAN HALL: We don't get into those
14 issues on a -- on a Motion to Dismiss, but it seems
15 like it's a somewhat different question as to -- I
16 mean, the public interest is obviously a very broad,
17 somewhat nebulous concept. And so to me, if the people
18 of the state of Missouri has spoken as to a
19 Constitutional right to farm, that should in some way
20 color our perspective of the public interest.

21 MR. LOWERY: I guess all I can say is I
22 don't think the people of Missouri have spoken that any
23 Constitutional right to farm should interfere with
24 necessary infrastructure that the statewide utility
25 commission finds ought to be built.

1 So the scope of that Constitutional
2 amendment I don't think implicates the issue because I
3 don't think it -- I don't think it suggests that
4 infrastructure ought to not be built or limited somehow
5 because of that amendment.

6 CHAIRMAN HALL: Okay. Last question, and
7 perhaps I should address this question to the counsel
8 for MIS0, but do you know what the status is of the one
9 Wisconsin case?

10 MR. LOWERY: I don't, but I suspect
11 Mr. Small does.

12 CHAIRMAN HALL: All right. Thank you.

13 JUDGE PRIDGIN: Chairman, thank you.
14 Commissioner Coleman, any questions? Hearing none.

15 COMMISSIONER COLEMAN: I'm sorry, Judge,
16 I couldn't take it all in fast enough.

17 JUDGE PRIDGIN: Do you have any
18 questions?

19 COMMISSIONER COLEMAN: I'm sorry, Judge,
20 I just couldn't take it off of mute fast enough.

21 JUDGE PRIDGIN: That's okay. Do you have
22 any questions?

23 COMMISSIONER COLEMAN: I don't have any
24 questions, but I do want to know if the slide that was
25 shown was handed out, and if not, if I would be able to

1 see that. That was a design of the tower, I believe.

2 MR. LOWERY: Commissioner Coleman, this
3 is Jim Lowery. It is -- both of those pictures are
4 attached to the surrebuttal testimony of Doug Brown as
5 schedules along with two additional pictures.

6 COMMISSIONER COLEMAN: Thank you. And
7 Judge, if you have a little patience with me, sometimes
8 my phone goes into a -- some kind of dead zone and I
9 have to pull it up and take it off of mute in order to
10 say something, so give me a couple seconds when you
11 ask, okay?

12 JUDGE PRIDGIN: Absolutely. Thank you.

13 COMMISSIONER COLEMAN: Thank you.

14 JUDGE PRIDGIN: All right. Thank you.

15 Opening statement from Staff. Mr. Williams, when
16 you're ready.

17 MR. WILLIAMS: Thank you, Judge. May I
18 approach?

19 JUDGE PRIDGIN: You may.

20 MR. WILLIAMS: May it please the
21 Commission. My name is Nathan Williams. Jamie Myers,
22 Jacob Westen and Kevin Thompson and Hampton Williams
23 are representing the Staff in this case.

24 What I've put up on the monitor and
25 handed out is a figure from the MTEP11, which is the

1 MISSO transmission expansion plan 2011, and there are a
2 couple of boxes shown on there that I've added to that
3 figure. One indicates the area that encompasses the
4 Mark Twain project and the other indicates the area
5 that encompasses the Illinois Rivers project. This is
6 purely for demonstrative purposes. This is also I
7 think several schedules of different witnesses
8 testimony in the case, aside from my additions to the
9 figure.

10 As you can see, the Mark Twain project
11 that's in front of you today goes from, as Mr. Lowery
12 described, northeast Missouri along the border between
13 Illinois and Missouri, over around Kirksville in the
14 north to the Iowa/Missouri border. The substation on
15 the east end, Maywood substation, the Commission
16 granted a certificate for that substation, or switching
17 station as ATXI calls it, as part of the Illinois
18 Rivers project in Case Number EA-2015-0145, sort of a
19 companion case to this one in terms of the timing of
20 the filings.

21 As you can see, as Mr. Lowery's
22 indicated, the 345 lines that are part of the MTEP11,
23 create a network that I think it's a fair
24 characterization to say the Mark Twain project is a
25 backbone of or a kind of a bottleneck. We don't have a

1 lot of the benefits that would flow from those lines up
2 in the northwest part of that map, wouldn't be as
3 helpful to the population centers towards the east and
4 the southern part of that map.

5 Now, in Appendix D to its application,
6 ATXI has included some maps indicating the routes of
7 the Mark Twain transmission project. As you can see,
8 this is the route that it's proposed from the Maywood
9 switching station over to the new substation as
10 planning as part of this case, near Kirksville, or the
11 Zachary substation. That route crosses a number of
12 roads and highways.

13 Similarly, we've included a map showing
14 that proposed route from that Zachary substation
15 northward to the Iowa/Missouri border, and as you can
16 see on that route, it crosses a number of roads and
17 highways. Then for the switching station, the Zachary
18 switching station shown on the right, the 161 kilovolt
19 line that is proposed to go from that substation over
20 to the existing Adair substation will go through a
21 portion of Kirksville across Highway 63, and in
22 addition crossing another public road in Adair County.

23 Now, Mr. Lowery's described to you his
24 understanding of Staff's position regarding the
25 requirement of having -- Staff's view that there's a

1 requirement of having authorization to cross public
2 roadways and highways in the state of Missouri that
3 emanate from elsewhere than the commission. In fact,
4 Staff believes the Commission doesn't have the
5 authority to do that authorization. That authorization
6 must come from the state because these lines are in the
7 county and by 229.100, the legislature has given the
8 counties the authority to permit those crossings.

9 Before the Commission can actually issue
10 a Certificate of Convenience and Necessity in this
11 case, ATXI must have those county assents or consents
12 or whatever label you want to put on it, but permission
13 to cross those roads.

14 Rather than advocating that the
15 Commission dismiss this case because ATXI does not have
16 those consents, Staff is suggesting that the Commission
17 go ahead and make a determination as to whether or not
18 the proposed facilities, which I would describe as two
19 lines and a substation, are convenient and necessary to
20 -- for purposes of granting a Certificate of
21 Convenience and Necessity, basically a declaratory
22 determination.

23 And then if ATXI goes out and obtains
24 those consents, Commission could still change its mind,
25 but at least we'll have told the company we think

1 you've met the requirements for public necessity and
2 convenience.

3 Now as to convenience and necessity, the
4 Staff as a Commission has done numerous times reviewed
5 the Tartan factors. As to the first factor, whether as
6 a need for the facilities in service, Staff witnesses
7 Daniel I. Beck and Shawn E. Lange addressed that.

8 Whether the applicant is qualified to own, operate,
9 control, and manage the facilities and provide a
10 service, that is addressed by Staff witness Beck.

11 Whether the applicant has a financial ability for the
12 undertaking, that is addressed by Staff witness David
13 Murray. Whether the proposal is economically feasible
14 is addressed by Staff witness Michael Stahlman. And
15 kind of an overarching, whether the facilities serve
16 and promote the public interest is really addressed by
17 all of Staff's witness, which include in addition to
18 those I've already named, Shawn Lange, Sarah
19 Kliethermes, and Natelle Dietrich.

20 Because there are lines -- because the
21 lines will cross roads in all of the five counties,
22 Marion, Shelby, Knox, Adair and Schuyler County,
23 ATXI needs to have consents or assents from all of
24 those counties for those road crossings before the
25 Commission can grant it a Certificate of Convenience

1 and Necessity.

2 It's Staff's recommendation that the
3 Commission impose some conditions on any grant of a
4 Certificate of Convenience and Necessity that it were
5 to issue in this case. Those include notice to the
6 Commission that ATXI has obtained required permits and
7 approvals before constructions that are necessary
8 before it begins that construction in Missouri, and
9 we're talking about things like land disturbance
10 permits, those sorts of things.

11 Requirements regarding the process for
12 minor route deviations, condition that ATXI will not
13 force the removal or relocation of occupied residential
14 structures from electric line easements, the filing of
15 final line route easements of the project with the
16 Commission, construction clearing maintenance repair
17 and right-of-way practices, and that ATXI file with the
18 Commission its annual FERC reports.

19 Staff has nothing further to add in an
20 opening statement at this time, and happy to try to
21 answer any questions the Commission may have.

22 JUDGE PRIDGIN: Mr. Williams, thank you.
23 Mr. Chairman.

24 CHAIRMAN HALL: Good morning. I want to
25 make sure I understand Staff's position on the -- on

1 the county assents. I'm going to read the section of
2 our November 2015 Order that I read to Mr. Lowery and
3 make sure that I understand whether you agree with this
4 or not. So the Commission may approve the CCN before
5 assent of the county commissions is shown while
6 conditioning the effectiveness of the CCN on the
7 subsequent submission of proof that the assents have
8 been obtained.

9 And that language, I believe, is based on
10 -- on accurate reading of the statute and our rule.
11 But I want to make sure I understand Staff's position
12 on that. Do you agree with that statement?

13 MR. WILLIAMS: No.

14 CHAIRMAN HALL: Okay. Can you explain to
15 me why?

16 MR. WILLIAMS: Basically, in order to
17 cross roadways, you need to have state authorization to
18 do that. This Commission --

19 CHAIRMAN HALL: Excuse me, state
20 authorization to do that?

21 MR. WILLIAMS: Yes. Somebody from the
22 state has to authorize you to across the roadways, if
23 you're a public utility. Before there was a
24 Commission, in order to provide utility service, you
25 would have to get authorization to use the public

1 rights of way. That didn't change by the creation of
2 the Commission. 393.170, that statute, is a
3 recognition that you need to meet those requirements
4 before the Commission can then lift the inhibition that
5 got imposed by the Public Service Commission law that
6 did not allow you to engage in utility service unless
7 you were doing so prior to the Public Service
8 Commission law.

9 CHAIRMAN HALL: I'm looking at 229.100.
10 And it says no person or persons, association,
11 companies, or corporations shall erect poles. So
12 arguably, the assent is required before the erection of
13 poles. And then I'm looking at our rule, and it says,
14 and this concerns the assents, if any of the items
15 required under this rule are unavailable at the time
16 the application is filed, they shall be furnished prior
17 to the granting of the authority sought.

18 So why -- why is it inappropriate, then,
19 if we were to determine that a CCN is -- should be
20 granted, that we condition the effectiveness that -- of
21 that on obtaining the assents?

22 MR. WILLIAMS: Because it doesn't arise
23 under the conditioning portion of the statute. But if
24 you take a look at 229.100, and I have basically a
25 Staff memo regarding its position on this issue, if you

1 want to see that now or wait until briefing, doesn't
2 matter to me, but, if you look at 229.100, it says no
3 person or persons, association, companies, or
4 corporation shall or allow and maintain pipes,
5 conductors, means and conduits for the purpose whatever
6 through on, under, or across the public roads or
7 highways of any county of this state.

8 CHAIRMAN HALL: Correct. I read that.

9 MR. WILLIAMS: It's not limited to poles.

10 CHAIRMAN HALL: Right, but it's -- it's
11 the same point, though, you can't physically -- under
12 this statute, you can't physically erect poles or power
13 wires or any of that without the assent. So how is
14 that inconsistent with granting a CCN and conditioning
15 the effectiveness of it upon obtaining those assents?
16 And maybe we're just going in circles and we'll wait
17 for briefing on it.

18 MR. WILLIAMS: Well, the only difference,
19 I think, is that the Commission explicitly has another
20 opportunity to review it after the assents are
21 obtained. In other words, it's not an automatic, just
22 filing the assents doesn't mean you have a valid
23 certificate. There needs to be some kind of an
24 affirmative act by the Commission.

25 CHAIRMAN HALL: So does Staff believe

1 that if we were to grant the CCN, that we have to make
2 a determination of whether the assents are required or
3 not, or could we grant the CCN, condition it upon
4 obtaining the assents if the assents are required and
5 rely on an Article III court to tell us whether or not
6 the assents are required?

7 MR. WILLIAMS: I think you're going to
8 hear an Article III court regardless of what you do,
9 but I think the Commission --

10 CHAIRMAN HALL: Probably a couple of
11 them.

12 MR. WILLIAMS: The Commission should go
13 forward with what it believes is the correct result and
14 I think it's going to need to make the legal
15 determination in the first instance.

16 CHAIRMAN HALL: Okay. Thank you.

17 JUDGE PRIDGIN: Commissioner Rupp, any
18 questions? Commissioner Coleman?

19 COMMISSIONER COLEMAN: No questions.

20 JUDGE PRIDGIN: All right. Thank you.

21 Mr. Williams, thank you.

22 Public Counsel? Mr. Opitz, when you're
23 ready.

24 MR. OPITZ: May it please the Commission.
25 Good morning.

1 Today the Commission, and this week, is
2 presented with four issues for determination in this
3 case. First, does the Commission possess authority to
4 approve ATXI's application? Public Counsel believes
5 that yes, the Commission has that authority. The
6 Commission so found in EA-2015-0145, also known as the
7 Illinois Rivers project, that ATXI is an electrical
8 corporation subject to the Commission's jurisdiction.

9 The second issue is whether the
10 transmission line project is necessary or convenient
11 for the public service. Now, the Commission may grant
12 a CCN after determining that the construction or
13 operation is necessary or convenient for the public
14 service, and in making that determination, the
15 Commission has set forth and applied certain criteria,
16 also referred to as the Tartan factors or sometimes
17 Tartan criteria. Public Counsel's position is that in
18 this case, the evidence supports a finding on the
19 merits that the Tartan criteria have been met.

20 The third issue is whether Sections
21 393.170 and Sections 229.100 require that before the
22 Commission can lawfully issue the CCN, that the
23 evidence must show that ATXI has received the county --
24 the consent of each county where the transmission line
25 will cross public roads and highways.

1 Public Counsel agrees with the Staff's
2 interpretation. It's our position that the applicant
3 must show it has received the required consent before
4 the Commission may grant a CCN. Granting the --
5 gaining the required county assents is not a condition
6 and should not be a condition on the effectiveness of a
7 CCN, but rather it is a prerequisite.

8 When the county assent is a precondition,
9 as the law and my interpretation says that it is, the
10 burden is on the applicant. Shifting the requirement
11 to a post-grant condition on the effectiveness
12 essentially shifts the burden to demonstrate compliance
13 with the law away from the applicant and on to other
14 interested parties. Such a shift is unreasonable,
15 especially when the law places the burden on the
16 company in the first instance.

17 Public Counsel understands that the
18 Commission wants to hear the merits of the application,
19 and I recognize that the Commission did not grant an
20 earlier Motion to Dismiss the case related to this
21 issue. And so here we are at the hearing. The
22 Commission will have the opportunity to hear the merits
23 on this case throughout the course of this week.

24 However, ATXI has not shown that it has
25 received the required county assents and so while the

1 Commission may examine the merits of the application,
2 it cannot grant the requested CCN at this time.

3 Lastly, should the Commission decide to
4 grant the CCN, what conditions, if any, should the
5 Commission pose? Public Counsel believes that in order
6 to protect the effected landowners and minimize to the
7 greatest extent possible the disruption of their
8 property, that the Commission should require ATXI to
9 follow the conditions regarding treatment of landowners
10 and land management outlined in the rebuttal testimony
11 of Mr. Daniel Beck.

12 And with that, I'm happy to answer any
13 questions that you may have for me.

14 JUDGE PRIDGIN: Mr. Opitz, thank you.
15 Mr. Chairman?

16 CHAIRMAN HALL: No questions, thank you.

17 JUDGE PRIDGIN: Commissioner Rupp?

18 COMMISSIONER RUPP: No, thank you.

19 JUDGE PRIDGIN: Commissioner Coleman?

20 COMMISSIONER COLEMAN: No questions.

21 JUDGE PRIDGIN: All right. Thank you.
22 Mr. Opitz, thank you.

23 MR. OPITZ: Thank you.

24 JUDGE PRIDGIN: Opening statement for
25 MISO. Mr. Small, when you're ready, sir.

1 MR. SMALL: Thank you, Your Honor, and
2 may it please the Commission. My name is Jeff Small
3 and I appear here on behalf of the Midcontinent
4 Independent System Operator, typically referred to as
5 MISO.

6 The Commission should grant ATXI a CCN as
7 sought in the application in this docket. The
8 application, pre-filed testimonies, and schedules
9 provided by ATXI, MISO, Commission Staff, and other
10 parties supporting the issuance a CCN demonstrate that
11 the proposed 345 kV transmission line and related
12 facilities satisfy the criteria that typically are
13 examined by the Commission for the granting of a CCN.

14 Mr. Lowery has mentioned the MVP
15 projects, the multi-value projects, which were planned
16 by MISO through a collaborative process involving a
17 range of stakeholders. The Mark Twain project that is
18 the subject of this docket is part of that MVP
19 portfolio of projects.

20 The MVP portfolio of transmission
21 projects was approved by the MISO independent board and
22 is under various stages of construction and completion.
23 In response to the Chairman's question asked earlier, I
24 will respond to the state of completion of the MVP
25 projects. Basically, all the approvals of state have

1 been received for the MVP projects of 17 -- the 17
2 projects that were mentioned by Mr. Lowery.

3 The only ones it -- the only remaining
4 state approvals that are required are those who are in
5 Missouri, involving this case, and one in Wisconsin.
6 The MVP five project that, Mr. Chairman, that you
7 inquired into, the MVP five project is split up into
8 two pieces, which the Wisconsin Commission determined
9 are separate projects from one another and could
10 proceed with separate proceedings.

11 The first of those projects, the Badger
12 Coulee line, was the subject of a proceeding before the
13 Wisconsin Commission that went to hearing last January
14 and subsequently in 2015 was approved by the Commission
15 and is under advanced stage of planning, perhaps
16 construction, I'm not sure exactly what the progress on
17 that line is.

18 A separate segment of the MVP project,
19 which goes from Madison to Dubuque, which is part of
20 the MVP portfolio, which is -- was displayed on the
21 screen awhile ago and is part of the MISO testimony in
22 this case. That Madison to Dubuque line has not been
23 the subject of an application before the Wisconsin
24 Commission.

25 So it has -- it is -- that plus the

1 Missouri portions are the only portions that are
2 remained to receive state commission approvals. But
3 that portion of the Wisconsin line hasn't been denied,
4 there just hasn't been an application yet. I
5 anticipate that that application will take place in
6 2016.

7 With that, MISSO supports issuance of the
8 CCN in this case and I'd be happy to answer any further
9 questions that you have on this matter.

10 JUDGE PRIDGIN: Mr. Small, thank you.
11 Mr. Chairman?

12 CHAIRMAN HALL: Welcome to Missouri,
13 Mr. Small.

14 MR. SMALL: Thank you.

15 CHAIRMAN HALL: A couple of questions.
16 One, one of the basis for the MVP projects at issue in
17 this case was the potential to move some wind energy
18 from -- from northern Missouri into the grid; is that
19 correct?

20 MR. SMALL: That was part of the planning
21 process, correct.

22 CHAIRMAN HALL: What is the status of
23 wind development in northern Missouri, do you know?

24 MR. SMALL: Well, if you're referring to
25 the immediate status, there is -- and there is part of

1 the pre-filed testimony in this case from MISO that
2 there are no wind projects -- wind farms in the
3 advanced stages of the MISO queue at this particular
4 time.

5 CHAIRMAN HALL: Does that effect the cost
6 benefit analysis?

7 MR. SMALL: The major benefit of this,
8 and that goes into the benefit costs is the reduction
9 of the production costs for -- after the lines are
10 constructed. So that major benefit, and that's, again,
11 will be part of the exhibits in this case, that major
12 benefit does not depend upon wind farms being
13 constructed in the state of Missouri. In fact, that
14 major benefit to Missouri doesn't even depend upon
15 having an RES requirement in the state of Missouri.

16 CHAIRMAN HALL: So am I to discern from
17 that that the ability to move wind energy from northern
18 Missouri into the grid did not play at all into the
19 cost benefit analysis?

20 MR. SMALL: I think that would be an
21 overstatement. Certainly it was part of the planning
22 process and the modeling process. I'm just saying that
23 the major -- major.

24 CHAIRMAN HALL: It wasn't the most
25 significant purpose?

1 MR. SMALL: I'm sorry?

2 CHAIRMAN HALL: It wasn't the most
3 significant purpose, it was one of the purposes?

4 MR. SMALL: It was part of the purpose
5 for the entire portfolio, yes. But as far as providing
6 the major support and the benefit cost analysis for the
7 Missouri portion, it would not change that benefit cost
8 ratio very much.

9 CHAIRMAN HALL: Okay. I have no further
10 questions. Thank you.

11 MR. SMALL: Thank you.

12 JUDGE PRIDGIN: Thank you. Commissioner
13 Rupp?

14 COMMISSIONER RUPP: No, thank you.

15 JUDGE PRIDGIN: Commissioner Coleman?

16 COMMISSIONER COLEMAN: No questions.

17 JUDGE PRIDGIN: Okay. Thank you.

18 Opening statement from United for Missouri, please.

19 MR. LINTON: I have no statement, Your
20 Honor.

21 JUDGE PRIDGIN: Mr. Linton, thank you.

22 IBEW is not present.

23 Neighbors United. Ms. Hernandez, when
24 you're ready.

25 MS. HERNANDEZ: May I approach?

1 JUDGE PRIDGIN: You may.

2 (NU Exhibit Number 45 was marked for
3 identification by the court reporter.)

4 MR. LOWERY: Your Honor, if I may inquire
5 about exactly what the nature of this so-called
6 exhibit. I mean, it's certainly fair in opening
7 statement to talk about what the evidence is expected
8 to show, but we've just got an amalgamation of news
9 articles and county documents and not sponsored by any
10 witness. That's been basically marked and given to the
11 Commission. I'm not sure what the purpose of this is
12 or the propriety of it.

13 MS. HERNANDEZ: Sure. I think that's
14 fair. Chairman Hall at the Kirksville local public
15 hearing, I believe, expressed an interest in acquiring
16 of ATXI in terms of the treatment of the landowners
17 when they were trying to inquire about how this line
18 intended to be crossed -- put across their property, so
19 this is a compilation of those news articles as well as
20 the individuals speaking about their treatment in our
21 hope that you would inquire of ATXI on that issue that
22 you had expressed interest in at the local public
23 hearing.

24 MR. LOWERY: With all -- and Commissioner
25 Hall's free to ask whatever questions he wants and we'd

1 be happy to answer those questions, but to hand the
2 Chairman a bunch of hearsay witnesses who aren't going
3 to appear about their perspective of things in news
4 articles, I think is completely inappropriate.

5 MS. HERNANDEZ: And I'm just wishing for
6 this to be demonstrative.

7 MR. LOWERY: I don't even think -- I
8 don't think you can just give the Commission
9 demonstrative evidence with the intention that the
10 Commission then ask questions that become part of the
11 record based on that hearsay. I don't think it's
12 appropriate. I think it's objectionable and I don't
13 think it's an appropriate mechanism for opening
14 statement or otherwise.

15 JUDGE PRIDGIN: And I don't think
16 anything's been offered yet, and if and when it's
17 offered, I'll rule on any objections, and then
18 obviously if it's admitted, the Commission is free and
19 capable of determining the weight of any evidence that
20 it admits.

21 MS. HERNANDEZ: Thank you. Good morning,
22 may it please the Commission. I'm Jennifer Hernandez,
23 and along with my co-counsel, Art Hernandez, we
24 represent Neighbors United in this matter. And it's
25 been awhile since I've had the privilege of being

1 before the Commission, so I thank you for your time
2 this morning and the opportunity to be here.

3 Neighbors United is a non-profit
4 organization organized in June 2015. The membership
5 includes over 400 members comprised mostly of
6 landowners that the proposed Mark Twain transmission
7 project would directly impact. But also other
8 landowners that have an interest in protecting the
9 prosperity of the rich farming land in their community
10 as well as other interested community members.

11 Unlike any other party in this case,
12 Neighbors United has a true connection with and
13 knowledge of the land that the Mark Twain transmission
14 project will impact. Membership includes individuals
15 from all five counties -- those being Marion, Knox,
16 Shelby, Schuyler, and Adair -- that the proposed Mark
17 Twain transmission project would impact.

18 They are hard-working farmers and
19 ranchers who depend on the land for their livelihoods
20 and to take care of their families. The proposed
21 routes of the Mark Twain transmission project goes
22 through some of the most rich and productive farmland
23 in Missouri. There are 102 properties the line would
24 cross diagonally. This is not counting if it just
25 clips a corner of the property. There are 41 ponds it

1 would cross and 78 properties it would dissect. There
2 are 140 homes within a thousand feet according to the
3 Mark Twain transmission project Web site.

4 It was my intent to also have copies of
5 these maps for your viewing, and I don't know if I'm
6 going to be able to switch this over to get it to work.
7 And I was not able to copy these because when they were
8 produced to us, they had a copyright, so I could not
9 actually make copies for the Commission to view.

10 But these are some of the examples I just
11 talked about in terms of the land impact and how it's
12 going to cross. This example has a fairly square
13 parcel. The transmission line is going to cut across
14 the parcel diagonally and goes directly over a pond and
15 a livestock waterer. I don't know -- since I don't
16 have copies, I don't know how you want to deal with
17 everybody to look at.

18 JUDGE PRIDGIN: And Ms. Hernandez, I've
19 asked someone from IT to come help you with that. So
20 they'll be here in just a moment.

21 MS. HERNANDEZ: Okay. And then there's
22 another parcel of land where the transmission line goes
23 across the land diagonally. It crosses a pond. And
24 the third example I have is -- there is another parcel
25 that has about 40 acres of CRP land, and it's this --

1 transmission line is also going to cross this parcel in
2 a diagonal matter, which you'll hear evidence this
3 week, this is much more -- causes much more impact on
4 the farming capability when it crosses directly across
5 the parcel in a diagonal manner versus -- even when it
6 does follow the property boundaries, there is an
7 impact, but much less when it follows property
8 boundaries.

9 I'm sure I don't have to remind you, but
10 right behind you on the wall is the great seal of the
11 State of Missouri. And it is a great reminder that we
12 are charged in this case to decide whether the Mark
13 Twain transmission project is necessary or convenient
14 for the public service. Not necessary or convenient
15 for MISSO, not necessary or convenient for any other
16 MISSO state, not even necessary or convenient for ATXI,
17 but whether the project is necessary and convenient for
18 the public service of Missouri.

19 Neighbors United asked the Commission to
20 deny ATXI's application and this week we'll present
21 seven witnesses for the Commission's consideration.
22 And I'll go through who they are as I go through the
23 legal framework that is important to this case.

24 I want to talk about the Missouri
25 Constitution, the County Commission approval

1 requirements, and of course the Tartan criteria in
2 determining whether the Mark Twain transmission project
3 is necessary and convenient for the public service.

4 So I'll back up a little bit. This is
5 the first example I spoke of where you can see outlined
6 in bluish color the parcel. These are maps that were
7 provided to Neighbors United through discovery and it
8 shows how the proposed transmission line is to cross
9 the property. You can see there's been a pond marked
10 here and livestock waterer. There's also a residence
11 on this parcel.

12 This is another example. And again,
13 there's I believe 364 maps that we received, so this is
14 just an example of how the land is crossing these
15 parcels. But again, in a diagonal matter cutting the
16 parcel in half, where to go from one to the other, you
17 have to work around this transmission line. And again,
18 this one is clipping the edge of a pond here.

19 In this parcel, an example of again going
20 across in a diagonal manner. The 40 acres here
21 outlined in yellow are CRP land, which have -- is land
22 under contract to do certain things. And then the area
23 that's been highlighted in pink is hay and corn land.

24 According to the Missouri Department of
25 Agriculture, Missouri ranks second in the country in

1 the number of farms per state and farmland counts for
2 66 percent of the state's land use. Missouri generates
3 over \$10 billion in agricultural cash receipts per
4 year. And agriculture is very important to Missouri.
5 Important enough to amend the Constitution to make
6 farming and ranching a Constitutional right.

7 The Missouri right to farm Constitutional
8 Amendment 1 was passed by voters on August 5th, 2014.
9 Article I of the Missouri Constitution contains the
10 Bill of Rights. According to the Missouri
11 Constitution, farming is a right. Article I, Section
12 35 of the Missouri Constitution reads that agriculture
13 which provides food, energy, health benefits and
14 security is the foundation and stabilizing force of
15 Missouri's economy. To protect this vital sector of
16 Missouri's economy, the right of farmers and ranchers
17 to engage in farming and ranching practices shall be
18 forever guaranteed in this state. Subject to the duly
19 authorized powers, if any, conferred by Article XI of
20 the Constitution of Missouri.

21 You will hear testimony this week from
22 both ATXI and Neighbors United that the Mark Twain
23 transmission project will permanently remove some
24 amount of citizen's property from production. That's
25 not a dispute between ATXI or Neighbors United.

1 Neighbors United witnesses addressing the
2 farming topics are Noel Palmer, Janet Akers, and Robert
3 Jackson, and I encourage you to ask questions as they
4 are experts in the area of agricultural and ranching
5 practices in this state.

6 Regarding the County Commission approval,
7 it is Neighbors United's position, as I believe can be
8 seen through the motions that we filed in this case,
9 that the County Commission approval is a precondition
10 of granting the CCN, this Commission's granting of the
11 CCN. And we've went through the rules, so I won't
12 bother using our time this morning on going through
13 what 4 CSR 240-3.105 provides as well as 229.100 that
14 has been discussed. So I won't waste our time this
15 morning going over that again.

16 But here today from Shelby County are
17 Commissioners Shuck and McCarty, and from Schuyler
18 County, we have Jeff Lindquist. From Adair County we
19 have County Commissioner Stan Pickens and Mark
20 Thompson. And did I miss any other County
21 Commissioners? I'm sorry?

22 UNIDENTIFIED SPEAKER: Carson Adams,
23 Adair County.

24 MS. HERNANDEZ: Carson Adams from Adair
25 County, and they are here on behalf of all five county

1 commissions who oppose the Mark Twain transmission
2 project.

3 It remains Neighbors United's position
4 that the Commission may not grant ATXI a Certificate of
5 Convenience and Necessity until the required approvals
6 from the county commissions are received and submitted
7 to this Commission for consideration. Staff and OPC
8 have stated that they are also in agreement with this
9 requirement.

10 The testimony in this case will show by
11 ATXI's own admissions that in the EA-2015-0145 case,
12 ATXI submitted assents from the necessary counties as
13 part of that filing that the Commission approved. It
14 will also show in this case some documents from
15 counsel, ATXI's counsel, speaking with the county
16 commissioners requesting their assent for the Mark
17 Twain transmission project to cross their counties.

18 Again, we feel that it's a precondition
19 of granting the CCN. I will bring this up for your
20 consideration. If and when ATXI gains assents, the
21 needs of ATXI may be totally different than the request
22 that they seek now, so we may be going through a
23 process that once they -- if they receive the assents
24 that is necessary in this case, depending on timing,
25 the case that you have decided may be moot as things

1 may have changed in their planning process. And then
2 the county commissioners are here, as I mentioned, if
3 you do have any questions of them.

4 And lastly, the Tartan criteria, of
5 course the question here is whether the Mark Twain
6 transmission project is necessary and convenient for
7 the public service within the meaning of that phrase in
8 Section 393.170 of the Missouri statutes. It's been
9 mentioned that the Commission has traditionally used
10 these criteria to determine the question that is here
11 before you today, and ATXI has not met its burden to
12 show that these criteria are satisfied.

13 I know you are aware of what the five
14 criteria are, so I won't go through and list each one
15 out to you, but I do want to quickly go through a few
16 of them as they relate to the testimony that we intend
17 to provide this week.

18 There must be a need for the service. To
19 summarize Neighbors United's position, there are viable
20 and cost-effective alternatives to constructing the
21 proposed ATXI 345 kilovolt line that achieved the
22 project objectives described in the ATXI application
23 while avoiding the economic and environmental impacts
24 to Missourians that would be caused by this project.

25 Unfortunately, Neighbors United's witness

1 William Powers is not available today, he is traveling
2 but he will be here to testify tomorrow on these
3 issues. He's very knowledgeable and I urge you to ask
4 of him any questions that you might have on this topic
5 today. He will testify that Ameren Missouri is the
6 only Missouri investor-owned utility beneficiary of
7 this project and it does not require the Mark Twain
8 transmission project to meet its renewable portfolio
9 standard by 2021.

10 You will -- he will also testify that
11 significant amounts of wind power can be accommodated
12 at the Adair substation and the developer pays for
13 these upgrades, if and when they would be put on the
14 system. There is also potential, as he will testify,
15 that this line will never be used for wind, but for
16 natural gas. I'll note that Ameren Missouri's IRP
17 states that it has plans to build a natural gas plant.

18 Whether the applicant is qualified to
19 provide the proposed service. Neighbors United asserts
20 that ATXI has failed to show that it is a qualified
21 entity to provide the proposed service. ATXI has shown
22 difficulty in fostering ongoing relationships with the
23 landowners that it will be required to continually work
24 with. At the Kirksville local public hearing, Chairman
25 Hall expressed an interest in inquiring of ATXI at the

1 evidentiary hearing, and that's part of the information
2 that we provided to you about these ongoing landowner
3 issues.

4 Of particular interest in that packet is
5 some media reports that were made by ATXI's former
6 Director of Stakeholder Relations Peggy Ladd
7 essentially stating this project is moving ahead either
8 way, and it's up to the residents to jump on board or
9 jump ship. Statements like this are hardly supportive
10 of the idea that the utility can work cooperatively
11 with landowners and consider their interests in
12 decision-making. There are members of Neighbors United
13 steering committee here today if you have any questions
14 about this landowner/ATXI relationship or the
15 experiences that they've encountered.

16 Whether the applicant's proposal is
17 economically feasible, another one of the criteria that
18 you'll be considering. It is Neighbors United's
19 position that ATXI has failed to show that this project
20 is an economic project standing on its own outside the
21 MVP portfolio.

22 You'll hear evidence from Mr. Powers that
23 ATXI has used MISO studies to suggest the economic
24 feasibility of the project; however, MISO did not
25 conduct independent cost studies for the specific Mark

1 Twain transmission project, which is a specific project
2 that this Commission is being asked to approve, not the
3 entire MVP portfolio.

4 Since the Commission is being asked to
5 specifically approve the Mark Twain transmission
6 project, it should require evidence of whether the
7 specific project's economic benefits outweigh the costs
8 and without it the Commission cannot determine whether
9 the project is in the economic interest of Missouri
10 citizens. This Commission makes decisions for Missouri
11 ratepayers, not a multi-state region as a whole and for
12 that reason, the Commission should deny a project that
13 cannot be supported by its own cost rate analysis.

14 Whether the service promotes public
15 interest. As I discussed earlier, the Missouri
16 Constitution states that agriculture is the foundation
17 and stabilizing force of Missouri's economy. To
18 protect this vital sector of Missouri's economy, the
19 right of farmers and ranchers to engage in farming and
20 ranching practices shall be forever guaranteed in this
21 state, subject to duly authorized powers, if any,
22 conferred by Article XI of the Constitution of
23 Missouri.

24 You'll hear evidence from Neighbors
25 United witnesses that ATXI seeks to build the Mark

1 Twain transmission project through approximately 378
2 properties, majority if not all are engaged in farming
3 and/or ranching practices. ATXI requests relief that
4 would permanently remove citizen's property from
5 production and prevent these citizen farmers and
6 ranchers from engaging in farming and/or ranching
7 practices.

8 While the extent of the intrusion is a
9 point of argument, even ATXI admits that some land will
10 be removed from production. As ATXI's actions infringe
11 on a Constitutional right, the service cannot promote
12 the public interest.

13 Further, you'll hear evidence about how
14 the Mark Twain transmission project is design to cross
15 through environmentally sensitive areas where several
16 endangered species are known to reside. You'll hear
17 evidence that ATXI failed to fully consult with the
18 United States Fish and Wildlife Service prior to
19 submitting the application to the Commission containing
20 a final route. The Missouri Department of Conservation
21 has also expressed concerns about ATXI's planning.

22 Neighbors United recommends the
23 Commission order ATXI to further consult with Fish and
24 Wildlife Service and the Missouri Department of
25 Conservation prior to granting the certificate in an

1 effort to minimize environmental impact.

2 The Commission has the ability through
3 its orders to instill the need for appropriate planning
4 prior to case filings. If authority is granted prior
5 to proper planning, there is a potential for running
6 rough shod through the process because the applicant
7 already has what it wants, in this case, the ability to
8 build the Mark Twain transmission project.

9 Another concern for Neighbors United is
10 ATXI's decision to build this project through Amish and
11 Mennonite communities. You'll hear testimony from
12 Neighbors United witness Jason Haxton about his
13 expertise in these communities, how the Amish and
14 Mennonites religious beliefs keep them from actively
15 opposing the Mark Twain transmission project, a fact
16 that only benefits ATXI. Neighbors United argues that
17 building across these communities against the public
18 interest as the project goes against their very way of
19 life.

20 Finally, you'll hear evidence this week
21 from Neighbors United's witness Mr. Boyd Harris on the
22 effect of transmission lines on property values and
23 Dr. Dennis Smith that will discuss the potential for
24 EMF exposure and health issues related to transmission
25 lines.

1 Overall, Neighbors United believes that
2 the evidence shows that the Mark Twain transmission
3 project is not in the public interest of Missouri, and
4 as such, is not necessary or convenient for the public
5 service. But since it was a question in the position
6 statement, I feel the need to discuss conditions that
7 should be imposed on the certificate if the Commission
8 decides to grant this CCN.

9 Neighbors United asserts that no
10 condition will completely alleviate the impacts this
11 project will have on landowners. And in no way should
12 this discussion be viewed as a waiver of Neighbors
13 United's argument that this project violates the
14 Missouri Constitution and the protection it affords the
15 farmers and ranchers.

16 But if the Commission does grant this
17 application, we would ask that the conditions set forth
18 in Mr. Dan Beck's surrebuttal testimony be ordered,
19 especially the condition that the certificate is
20 limited to the construction of this line and the
21 location specified in the application and as -- as was
22 represented to landowners on the aerial photos provided
23 by ATXI, unless a written agreement from the landowner
24 is obtained or ATXI gets a variance from this
25 Commission for that particular property.

1 I believe Staff has changed its position
2 on this condition, but that OPC still supports this.
3 It's important and it's relevant in your decision
4 because this protects the landowners and here's why.
5 The farmers and ranchers that are subject to this
6 proposed line are making decisions about their
7 livelihood everyday. They are making decisions such as
8 where to grow crops, where to build barns, and overall
9 where to make investments in their property and
10 livelihood.

11 For these reasons, if the Commission
12 approves the line, it should do so as represented in
13 the application. The landowners are going to
14 experience impact just by this line crossing their
15 property. They should not have to wonder whether the
16 decisions that they have to make today regarding their
17 farm will be negated by ATXI down the road without an
18 opportunity to defend their investment.

19 I want to end with this thought: ATXI is
20 arguing that the need for the Mark Twain transmission
21 project should be considered in a vacuum without any of
22 the farming implications or environmental planning or
23 county approval discussion. You should not decide this
24 case in this manner.

25 Anything that can negatively impact

1 agriculture should be a part of the consideration for
2 the public interest. Any of the health and
3 environmental impacts should be a part of the
4 consideration for the public interest, and any rules or
5 statutes that should be complied with should be a part
6 of the consideration for the public interest.

7 I thank you for your time this morning.
8 Unless you have questions, I'll end by stating that we
9 request you deny ATXI's application for the reasons
10 spoken. Thank you.

11 JUDGE PRIDGIN: Ms. Hernandez, thank you.
12 Mr. Chairman.

13 CHAIRMAN HALL: Good morning.

14 MS. HERNANDEZ: Good morning.

15 CHAIRMAN HALL: Picking up with an issue
16 you just raised, you made the argument that -- that the
17 right to farm provision should be a part of the
18 consideration this Commission takes into account in
19 determining public interest; is that correct?

20 MS. HERNANDEZ: Correct.

21 CHAIRMAN HALL: Okay. So you're not
22 making the argument that the right to farm is an
23 absolute right, and that as a result, any -- anything
24 that took land out of production in and of itself be a
25 violation of that constitutional; right?

1 MS. HERNANDEZ: If I -- if that's the
2 impression, I did not intend to give that impression.
3 I am basing my argument on the Commission's decision to
4 deny our Motion to Dismiss. We renewed that motion and
5 that is still a standing objection in our view that
6 there is a constitutional right and that anything that
7 infringes on their right to farm violates the Missouri
8 Constitution. As the --

9 CHAIRMAN HALL: So you are taking the
10 position that is an absolute right?

11 MS. HERNANDEZ: Yes.

12 CHAIRMAN HALL: That it's not balanced by
13 anything at all?

14 MS. HERNANDEZ: Not according to Missouri
15 Constitution.

16 CHAIRMAN HALL: So the right to free
17 speech is not balanced by anything else? The right to
18 worship is not balanced by anything else? I find that
19 hard to believe that you take that position.

20 MS. HERNANDEZ: Well, I haven't looked at
21 those other Constitutional issues, so I don't know if
22 I'm educated to speak to those.

23 CHAIRMAN HALL: Okay.

24 MS. HERNANDEZ: But according to the
25 Missouri Constitution and the way it reads, it's our

1 interpretation, the case law and Constitutional
2 interpretation is that that provision should be given
3 broad interpretation, using the plain meaning of those
4 words.

5 Again, I don't mean it in a disrespectful
6 way to argue that we believe the Commission doesn't
7 have the authority because of this Constitutional
8 amendment, but we are arguing this Constitutional
9 amendment applies in this case, and if ATXI is allowed
10 to build on their property, that infringes as ATXI has
11 even admitted there is some portion of the land that
12 will be taken out of use.

13 CHAIRMAN HALL: As a practical matter,
14 would your interpretation of the right to farm result
15 in -- or would it prevent any further transmission in
16 rural Missouri?

17 MS. HERNANDEZ: I -- if they were to
18 cross farmland, yes, I do believe so.

19 CHAIRMAN HALL: So there would be a
20 moratorium on all transmission in the state of
21 Missouri.

22 MS. HERNANDEZ: I know this is a
23 difficult issue, it's something that -- I mean, this is
24 literally one of the first cases that has raised this
25 issue. There's not much case law on it. And I

1 understand the position that the Commission would be in
2 with this Constitutional amendment.

3 CHAIRMAN HALL: Let me switch gears to
4 the -- to the county assent issue. If -- if the
5 Commission were to determine that a CCN is -- is
6 appropriate after evaluation of the Tartan factors, do
7 you believe that it would be appropriate -- or explain
8 to me why it would be inappropriate for us to grant the
9 CCN conditioned upon submission of proof that the
10 assents have been obtained.

11 MS. HERNANDEZ: I think as the rules of
12 the Commission state, that this is a precondition of --
13 of the granting of the CCN. In the public interest, I
14 think it's important to have your project planned
15 before you file your application and I think your
16 orders, even though they don't necessarily have an
17 expressed purpose of setting forth public policy, they
18 do.

19 And if projects are allowed to be
20 approved when there hasn't been appropriate planning or
21 approvals gained before the application is filed, I
22 think that sends a very detrimental message to others
23 coming behind us that you don't have to have everything
24 in line before you file an application for
25 consideration before the Commission.

1 CHAIRMAN HALL: Do you believe that the
2 Commission needs to make a legal determination as to
3 whether the assents are required?

4 MS. HERNANDEZ: I do think so. It's in
5 your rules. It talks about the items that are required
6 for an application. It's a Missouri statute. It's
7 based on Missouri statute, your rules are, in terms of
8 the requirements that are necessary for granting, and
9 so I think going through the rules that apply to
10 applications, that would lead you to make a decision on
11 whether this is required or not.

12 CHAIRMAN HALL: Thank you.

13 MS. HERNANDEZ: Thank you for your time.

14 JUDGE PRIDGIN: Commissioner Rupp.

15 COMMISSIONER RUPP: Good morning.

16 MS. HERNANDEZ: Good morning. How are
17 you?

18 COMMISSIONER RUPP: I'm well, and you?
19 You made a comment that MISO did not do a cost benefit
20 study on this MVP project. Did they do a cost benefit
21 analysis on any of the other MVP projects or did they
22 not do any? I wanted to clarify.

23 MS. HERNANDEZ: I don't know if they did
24 economic studies of each project individually. To my
25 knowledge, they did one as a whole.

1 COMMISSIONER RUPP: As a whole. Okay.

2 MS. HERNANDEZ: But our expert,
3 Mr. Powers, I'm sure he will be able to answer that
4 question probably better.

5 COMMISSIONER RUPP: All I ask your
6 witness. And then you also stated that the Missouri
7 Department of Conservation had some concerns about this
8 project. Where in the record or those concerns that I
9 could make note of them?

10 MS. HERNANDEZ: Those are brought up in
11 our witness' testimony, Mr. Powers, as well as we do
12 intend to bring out some more evidence for the
13 Commission's consideration this week.

14 COMMISSIONER RUPP: Thank you. That's
15 all I have.

16 MS. HERNANDEZ: Thank you.

17 JUDGE PRIDGIN: Commissioner Coleman, any
18 questions?

19 COMMISSIONER COLEMAN: Yes, one, for
20 clarification. I believe I heard mentioned that there
21 were some requirements as far as support by county
22 commissioners, and I wanted confirmation on exactly
23 what you said there.

24 MS. HERNANDEZ: Yes. I was talking about
25 the requirements in the Commission's rules that the

1 county commissioners give their assent to ATXI's or any
2 lines crossing their county prior to a certificate
3 being granted in this case. So it's our belief that
4 before the Commission can grant a certificate in this
5 case, those assents have to be before the Commission.

6 COMMISSIONER COLEMAN: Let me be more
7 specific. I didn't mean our rules, I wanted to know --
8 I think I heard you say you had county commissioners
9 there as witnesses and also that those county
10 commissioners were not in support of the project. I'm
11 asking for clarification if that's what I heard.

12 MS. HERNANDEZ: Yes, that's correct,
13 Commissioner. We do have several county commissioners
14 here, so if you would have any questions, they are
15 available and they are opposed to this project in their
16 county.

17 COMMISSIONER COLEMAN: Okay. Thank you.
18 Thank you, Judge.

19 JUDGE PRIDGIN: All right. Thank you. I
20 don't have any questions.

21 Ms. Hernandez, thank you.

22 MS. HERNANDEZ: And I would like to offer
23 that as a demonstrative exhibit.

24 JUDGE PRIDGIN: That would be 45?

25 MS. HERNANDEZ: Forty-five.

1 JUDGE PRIDGIN: All right. Forty-five
2 has been offered. Any objections?

3 MR. LOWERY: Yes, Your Honor. Forty-five
4 consists of hearsay, it's inadmissible. It's really
5 that simple. It's inadmissible hearsay. You can't
6 rely upon hearsay to make your decisions. It's a
7 fundamental rule of evidence.

8 JUDGE PRIDGIN: The objection is
9 overruled, Exhibit 45 is admitted.

10 (NU Exhibit Number 45 was received into
11 evidence by Judge Pridgin.)

12 JUDGE PRIDGIN: And this looks to be a
13 convenient time to take a break. I'm showing the clock
14 here in the room is not quite 10:30. Let's go into
15 recess. We will resume at 10:45. Thank you. We are
16 off the record.

17 (A break was held.)

18 JUDGE PRIDGIN: Thank you. We're back on
19 the record. We have completed opening statements and I
20 believe the first witness to take the stand would be
21 Ms. Borkowski. Anything else before she takes the
22 stand.

23 MR. FITZHENRY: Nothing, Your Honor. For
24 the record, my name is Ed Fitzhenry and ATXI does call
25 Ms. Maureen Borkowski to the stand.

1 JUDGE PRIDGIN: Okay. Thank you. Please
2 come forward and be sworn, please.

3 (The witness was sworn by Judge Pridgin.)

4 JUDGE PRIDGIN: Thank you very much. You
5 may be seated. And when with you're ready, sir.

6 MR. FITZHENRY: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. FITZHENRY:

9 Q. **Good morning, Ms. Borkowski. Could you**
10 **please state your name and business address?**

11 A. Maureen A. Borkowski, 1901 Chouteau,
12 St. Louis, Missouri 63103.

13 Q. **On whose behalf are you testifying in**
14 **this proceeding?**

15 A. Ameren Transmission Company of Illinois.

16 Q. **And have you caused to be prepared**
17 **certain direct testimony identified for the record as**
18 **Exhibit 1, the direct testimony of Maureen Borkowski?**

19 A. Yes.

20 Q. **Do you have any additions or corrections**
21 **to that testimony?**

22 A. I do not.

23 Q. **If I were to ask you those questions,**
24 **would you give the same answers this morning?**

25 A. Yes.

1 **Q. And have you also caused to be prepared**
2 **what's been identified for the record as Exhibit 2,**
3 **titled the surrebuttal testimony of Maureen Borkowski?**

4 A. Yes.

5 **Q. Do you have any corrections or additions**
6 **to that testimony?**

7 A. No.

8 **Q. If I were to ask you those questions,**
9 **Ms. Borkowski, would you give the same answers this**
10 **morning?**

11 A. Yes.

12 MR. FITZHENRY: Your Honor, at this
13 point, I move for the admission of Exhibits 1 and 2,
14 and tender Ms. Borkowski for cross-examination.

15 JUDGE PRIDGIN: Any objections? Hearing
16 none, Exhibit 1 is admitted. Exhibit 2 is admitted.

17 (ATXI Exhibit Numbers 1 and 2 were
18 received into the record by Judge Pridgin.)

19 JUDGE PRIDGIN: Cross-examination, Staff.

20 MR. WILLIAMS: Thank you, Judge.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. WILLIAMS:

23 **Q. Good morning, Ms. Borkowski.**

24 A. Good morning.

25 **Q. In your testimony, you refer to Ameren**

1 **Transmission Company of Illinois as ATXI. If I do the**
2 **same in my questions, will you understand that I mean**
3 **Ameren Transmission Company of Illinois?**

4 A. Yes.

5 **Q. On line 18 at page 3 of your direct**
6 **testimony --**

7 A. Yes, sir.

8 **Q. -- you say that ATXI is seeking a**
9 **Conditional Certificate of Public Convenience and**
10 **Necessity. What is it that you mean by "conditional"**
11 **in that sentence?**

12 A. I'm not a lawyer, but it's my
13 understanding that there is a question pending in the
14 courts about whether or not the Commission has
15 jurisdiction over an entity like ATXI. So in the event
16 that the certificate is issued, we'd like for the
17 Commission to issue the certificate, but with the
18 understanding that at some point, the courts rule that
19 the Commission does not have jurisdiction, at that
20 point, the certificate wouldn't apply.

21 **Q. So by "conditional," you mean that if the**
22 **Commission's found to be without jurisdiction, then**
23 **there would be no certificate?**

24 A. If there was no ability for the
25 Commission to issue one, I think that would be the

1 outcome. Again, I'm not an attorney.

2 **Q. Does ATXI have any agreements of the**
3 **county commissions of Marion, Shelby, Knox, Adair, and**
4 **Schuyler Counties of Missouri for ATXI to suspend wires**
5 **across the public roads and highways of any of those**
6 **counties for the Mark Twain transmission project?**

7 A. No, sir, not presently.

8 **Q. Do you know if ATXI has any authorization**
9 **from the state of Missouri to suspend wires across the**
10 **public roads or highways anywhere in the state of**
11 **Missouri for the Mark Twain project?**

12 A. Not for the Mark Twain project at this
13 time.

14 **Q. On page 4 of your direct testimony at**
15 **lines 11 to 14, you stated that ATXI has never held**
16 **itself out to the general public in Missouri or any**
17 **state as an indiscriminate provider of retail electric**
18 **service and has no plans to do so in the future. Will**
19 **ATXI hold itself out to the general public as an**
20 **indiscriminate provider of wholesale electric service?**

21 A. No, ATXI is a transmission-only entity
22 and does not provide electric service.

23 **Q. Will ATXI hold itself out to the general**
24 **public as an indiscriminate provider of wholesale**
25 **electric transmission service?**

1 A. Our obligation and ability to provide
2 transmission service is as a part of our membership of
3 the Midcontinent ISO. So yes, via that tariff
4 mechanism, that's how ATXI offers electric transmission
5 service for use by any entities who do provide direct
6 electric service.

7 **Q. Is ATXI authorized under that tariff to**
8 **discriminate in who it provides transmission service**
9 **to?**

10 A. Under FERC rules, that's
11 non-discriminatory access.

12 **Q. Thank you, Ms. Borkowski .**

13 JUDGE PRIDGIN: Mr. Williams, thank you.
14 Any cross from MISO?

15 MR. SMALL: No, Your Honor.

16 JUDGE PRIDGIN: United for Missouri?

17 MR. LINTON: No questions, Your Honor.

18 JUDGE PRIDGIN: Public Counsel?

19 MR. OPITZ: No questions, Your Honor.

20 JUDGE PRIDGIN: Neighbors United?

21 MS. HERNANDEZ: Yes, thank you.

22 CROSS-EXAMINATION

23 QUESTIONS BY MS. HERNANDEZ:

24 **Q. Good morning.**

25 A. Good morning.

1 **Q. Ms. Borkowski , you are the president of**
2 **ATXI ; correct?**

3 A. Yes.

4 **Q. And as president of ATXI , you have the**
5 **overall management responsibility of ATXI ?**

6 A. Yes.

7 **Q. Including oversight of the development**
8 **and planning of the Mark Twain transmission project ;**
9 **correct?**

10 A. Yes.

11 **Q. And do you agree that your oversight**
12 **includes the oversight of complying with the applicable**
13 **rules and requirements regarding the construction of**
14 **the Mark Twain transmission project?**

15 A. Yes.

16 **Q. If I refer to Mark Twain transmission**
17 **project as MTTP , can we have that understanding that**
18 **those two are the same?**

19 A. That would be fine.

20 **Q. Okay. Might shorten the record versus me**
21 **saying that full each time. If you could turn to your**
22 **direct testimony at page 7 at lines 13 through 16.**

23 A. Yes.

24 **Q. The question there reads: Will**
25 **ATXI obtain the necessary assent from the county**

1 commissions for Marion, Shelby, Knox, Adair and
2 Schuyler Counties before construction? Did I read that
3 correctly?

4 A. Yes.

5 Q. And your answer to that question at lines
6 15 through 16 of page 7 of your direct testimony reads:
7 Yes, ATXI will obtain the necessary assents before
8 construction in each county. Did I read that
9 correctly?

10 A. You did read that correctly, but I did
11 clarify that answer in my surrebuttal testimony.

12 Q. Okay. But the answer was yes, you did
13 state it in your direct testimony?

14 A. Yes, but it was further clarified.

15 Q. And just below that question and answer
16 on page 7 at lines 17 through 18 of your direct
17 testimony, the question asks you: Will ATXI obtain all
18 necessary approvals for crossing railroad lines and
19 state highways before construction; is that correct?

20 A. Yes.

21 Q. Okay. And your answer to that question
22 at lines 19 through 20 reads: Yes, all necessary
23 approvals or consents required to cross railroad lines
24 and state highways within the proposed routes will be
25 obtained before construction; correct?

1 A. That is a statement and it's my
2 understanding that any such required approvals have
3 been achieved.

4 MS. HERNANDEZ: May I approach?

5 JUDGE PRIDGIN: Yes, you may.

6 (NU Exhibit Number 46 was marked for
7 identification by the court reporter.)

8 BY MS. HERNANDEZ:

9 **Q. I've just handed you what's been marked**
10 **as Exhibit 46. Do you recognize the letters contained**
11 **in this exhibit?**

12 A. Yes.

13 **Q. And do you agree that this exhibit**
14 **contains five letters, each identical and sent on**
15 **behalf of ATXI to the presiding commissioners of each**
16 **county through which ATXI is proposing construction in**
17 **this case?**

18 A. Yes.

19 **Q. And would you agree that each letter is**
20 **cc'd to the other commissioners in that county;**
21 **correct?**

22 A. It is. Just to clarify, I don't know
23 whether or not there's been any change in the
24 commissioners since these letters were sent, but
25 certainly it was copied to the commissioners at that

1 time.

2 **Q. Okay. Thank you. And would you agree**
3 **that ATXI participated in outreach with the five**
4 **counties commissioners, those being Marion, Knox,**
5 **Shelby, Schuyler, and Adair to discuss their assents to**
6 **ATXI to construct, direct, place, maintain, own, and**
7 **operate lines and conductors across and over the public**
8 **roads and highways of each county?**

9 A. No, I don't think so. Could you reread
10 the question?

11 **Q. Sure. Would you agree that**
12 **ATXI participated in outreach with the five county**
13 **Commissions? Did you contact them to discuss their**
14 **assents?**

15 A. No, I believe we contacted them to
16 discuss the project.

17 **Q. Okay. If you look at the exhibit that**
18 **you stated you recognized in the second paragraph.**

19 A. Yes.

20 **Q. That reads as part of the project,**
21 **ATXI anticipates asking for the assents of the first**
22 **letter is Adair County Commission; is that correct?**

23 A. Yes. This was a notification letter. As
24 I understood your previous question, it was about
25 outreach and the outreach that we did in terms of

1 meetings with individual commissioners, again, were to
2 educate them about the project. This letter, I
3 believe, was -- each of these letters was a courtesy
4 notice informing the commission that we would be
5 ultimately seeking assents and asking to provide the
6 name of attorneys so that that process could begin.

7 **Q. Okay. And the last -- thank you. And**
8 **the last paragraph, let's see, second to last sentence,**
9 **it starts: It is our expectation that we will have any**
10 **required assents prior to the issuance of an MPSC**
11 **Order, therefore your prompt response would be**
12 **appreciated. Did I read that correct?**

13 A. You did. And it was our expectation at
14 that time.

15 **Q. And this letter was sent on behalf of**
16 **ATXI from your counsel, Mr. Jeffrey Rosencrants;**
17 **correct?**

18 A. Yes.

19 **Q. And from that statement, would you agree**
20 **that ATXI expected to receive approval from the five**
21 **county commissions prior to the issuance a PSC order in**
22 **this case?**

23 A. At that time, yes.

24 **Q. And would you agree that ATXI began**
25 **discussing the request for assents with each of the**

1 **five county commissions beginning in June 2014?**

2 A. No, again, I don't think so. My
3 understanding is that we did commence discussion with
4 the commissioners with regard to the project, but not
5 specifically with regard to assents. I believe this
6 letter asking for the names of the attorneys was the
7 first specific contact regarding assents.

8 MS. HERNANDEZ: May I approach, please?

9 JUDGE PRIDGIN: You may.

10 (Exhibit Number 47 was marked for
11 identification by the court reporter.)

12 BY MS. HERNANDEZ:

13 **Q. Ms. Borkowski, would you agree that this**
14 **is ATXI's response to Data Request 219 asked by**
15 **Neighbors United to ATXI?**

16 A. Subject to check, I would.

17 **Q. Okay.**

18 A. Again, it doesn't have the cover that
19 indicates it was our response.

20 **Q. All right. At the top of the attachment,**
21 **it reads information requested by DR 2-19 A through E;**
22 **correct?**

23 A. Yes, it does.

24 **Q. Now, would you agree that since June**
25 **2014, ATXI has had contact with Knox County Commission**

1 **regarding the Mark Twain transmission project either by**
2 **e-mail, phone call, or in person approximately 11**
3 **times?**

4 MR. FITZHENRY: Your Honor, I'm going to
5 object. Ms. Borkowski was not the person that
6 sponsored the information contained in this exhibit. I
7 believe another witness that's scheduled for
8 examination later in the week is available to talk
9 about the content. There have been no demonstration
10 that Ms. Borkowski provided the input into this
11 document, so really, she's left to simply wander
12 through the document as we are right now trying to
13 understand its full content.

14 MS. HERNANDEZ: And if I could reply.
15 Ms. Borkowski did state that she is in charge of the
16 oversight involving the applicable rules and
17 requirements regarding the construction, so I believe
18 she is qualified and can answer questions about how
19 many times the ATXI contacted the county commissions.

20 MR. FITZHENRY: One other -- Your Honor,
21 forgive me. My understanding, too, this document may
22 not be prepared by an ATXI person but was a compilation
23 put together by Neighbors United based on information
24 that might have been provided by ATXI; is that correct?

25 MS. HERNANDEZ: No, this is -- this is an

1 attachment that was sent directly by ATXI to a data
2 request.

3 MR. FITZHENRY: Okay.

4 JUDGE PRIDGIN: All right. I'll overrule
5 the objection and if the witness doesn't know the
6 answer to the question, she can say so.

7 THE WITNESS: I don't -- again, as
8 Mr. Fitzhenry indicated, I haven't had the opportunity
9 to review this document or do a count, but I'm
10 certainly willing to stipulate that ATXI on numerous
11 occasions made outreach to the county commissioners to
12 explain the project to them and to make sure that they
13 had necessary information about the project.

14 BY MS. HERNANDEZ:

15 Q. Okay. And would you make that same
16 stipulation for all five counties?

17 A. Yes.

18 Q. Okay. And would you agree as of today,
19 ATXI has not obtained assents from Knox County
20 Commission?

21 A. ATXI has not received assents from the
22 Mark Twain project for any of the counties because we
23 haven't asked for them.

24 Q. If you could turn to page 3 of Exhibit 47
25 that was handed to you.

1 A. I don't have -- which is Exhibit 47?

2 Q. **It was the chart contacts.**

3 A. Oh, okay. The pages aren't numbered, so
4 is that the one that has number 28 at the top?

5 Q. **Yes, ma'am. In column -- or row 39,**
6 **would you agree that it states there was a phone call**
7 **between Ameren personnel to county commissioners in**
8 **Schuyler, Knox, and Marion to discuss commissioners**
9 **signing a consent?**

10 A. It indicates that on this graph.
11 Mr. Baker is not an Ameren employee. He was a
12 consultant. I'm not familiar with this particular
13 piece of information.

14 Q. **Would you have been contacting the county**
15 **commissions on your behalf?**

16 A. He may have, but he was not authorized to
17 request consents. And I think that's clear from
18 Mr. Rosencrants' letters some months later where he, in
19 order to begin the process, asked for the names of the
20 attorneys, which would have been the appropriate
21 mechanism.

22 Q. **And -- okay. Would you agree with me**
23 **that all five county commissions, those being Marion,**
24 **Knox, Shelby, Schuyler, and Adair have passed**
25 **resolutions of opposing the MTP in their respective**

1 **county?**

2 A. Yes, I have seen those resolutions, and
3 one of the things --

4 MS. HERNANDEZ: Your Honor, I think that
5 was a yes-or-no question.

6 JUDGE PRIDGIN: I agree. That simply
7 asked you if you are aware. If you could just answer
8 yes or no.

9 THE WITNESS: Yes, I'm aware.

10 BY MS. HERNANDEZ:

11 **Q. Now, Ms. Borkowski, as being president of**
12 **ATXI, you would agree that it's important for**
13 **landowners to receive notice from ATXI should**
14 **ATXI intend to build on their property; correct?**

15 A. We try very hard to give property owners
16 appropriate notice.

17 MS. HERNANDEZ: Your Honor, I believe
18 again, this is a yes-or-no question.

19 MR. FITZHENRY: I completely disagree.
20 It was an open-ended question. I'd like Ms. Borkowski
21 to explain her answer.

22 JUDGE PRIDGIN: I thought you said would
23 you agree. Would you like to ask the question again,
24 Ms. Hernandez?

25 ///

1 BY MS. HERNANDEZ:

2 Q. Would you agree that it is important for
3 landowners to receive notice from ATXI should
4 ATXI intend to build on their property?

5 A. Yes.

6 Q. If you could refer to page 4, footnote 1,
7 of your surrebuttal testimony. And just let me know
8 when you're there, please.

9 A. Yes.

10 Q. And that footnote reads: All landowners
11 whose property is impacted by the final routes
12 described and depicted in ATXI witness Chris Woods'
13 testimony have been notified in writing; is that
14 correct?

15 A. That's what it says, yes.

16 Q. And from your verification that all
17 landowners were contacted, is it correct that you have
18 knowledge of the processes that were used to identify
19 and contact landowners?

20 A. I have some knowledge. I would say that
21 Mr. Woods and Mr. Jontry would be more familiar with
22 the specific mechanisms.

23 Q. Okay. But you do have some knowledge of
24 the process?

25 A. Yes.

1 MS. HERNANDEZ: Okay. I would ask for
2 the Commission to take judicial notice of its Notice of
3 Extra Record Contact issued January 14th, 2016.

4 MR. FITZHENRY: Could you ask that again?
5 I didn't catch it.

6 MS. HERNANDEZ: I would ask for the
7 Commission to take judicial notice of its Notice of
8 Extra Record Contacts that was issued on January 14,
9 2016.

10 MR. FITZHENRY: It would strike me as
11 being hearsay, Your Honor, and having no evidentiary
12 value. The company has a right to close the evidence
13 and now it's being asked to respond or look at evidence
14 it's not seen before. It's hearsay.

15 JUDGE PRIDGIN: Thank you. I'll
16 overrule. The Commission will take notice of that --
17 that notice of extra record communication.

18 BY MS. HERNANDEZ:

19 **Q. Are you familiar with that record or**
20 **would you like a copy of it?**

21 A. I am not familiar.

22 MR. WILLIAMS: Judge, maybe I missed
23 something, but what has on it information requested by
24 DR-219 A through E been marked as an exhibit?

25 JUDGE PRIDGIN: Yes, it's 47.

1 MR. WILLIAMS: Okay. Thank you.
2 (Exhibit Number 48 was marked for
3 identification by the court reporter.)

4 BY MS. HERNANDEZ:

5 Q. Ms. Borkowski, you have in front of you
6 what's been marked Exhibit 48, the Notice of Extra
7 Record Contact. Can you turn to page 3 of that notice?

8 A. Okay. This is the letter signed by
9 Mr. Haer.

10 Q. Correct. Would you agree that Mr. Haer
11 states that we were never contacted face-to-face or
12 given any form of written notification that this
13 property was in the pathway of these power lines?

14 A. That is what the letter says. I believe
15 that either Mr. Wood or Mr. Jontry plans to address
16 this. I will state that I don't know whether or not
17 this statement is true. I do know that ATXI made every
18 effort to contact property owners based on the tax
19 roles in the specific counties.

20 I certainly would agree that it's
21 possible that someone was missed. We did also do
22 advertising of our public meetings, which would have
23 certainly provided an avenue for people to become aware
24 of the project as well. However, that being said, I
25 don't believe we have any statutory obligation or

1 regulatory obligation to do a 100 percent contact of
2 property owners while the project is still in flight
3 prior to the certificate application. In fact, we do
4 expect to contact every property owner who might be
5 impacted by construction in order to get an easement.
6 So certainly prior to any construction, every property
7 owner who would be impacted by that construction will
8 be contacted.

9 **Q. But you would agree, yes, that Mr. Haer**
10 **states that he was never contacted face-to-face?**

11 MR. FITZHENRY: Objection, it's hearsay.
12 It's one thing for the Court to take judicial notice of
13 the document. It's another thing completely to ask the
14 witness to agree to hearsay statement.

15 MS. HERNANDEZ: I'm just asking her to
16 agree that that's what it states.

17 JUDGE PRIDGIN: I'll overrule.

18 THE WITNESS: I said that that is what it
19 states, but I have no way of verifying whether or not
20 it is true.

21 BY MS. HERNANDEZ:

22 **Q. Your surrebuttal testimony at pages 18**
23 **through 19 refers to customer relations. Is that a**
24 **fair characterization?**

25 A. Yes.

1 **Q. And as president, are you aware of the**
2 **open houses that were held on October 28th, 29th, and**
3 **30th of 2014 regarding the MTTP?**

4 A. Yes.

5 **Q. And would you agree that these open**
6 **houses were times when a landowner could come and view**
7 **ATXI's information about the project and ask questions?**

8 A. Not sure I understand the question that
9 they were timed. That was their purpose.

10 **Q. Okay. Are you aware that before**
11 **interested landowners could enter the public house,**
12 **they had to first sign a sign-in sheet or they would**
13 **not be allowed to enter?**

14 A. Yes. That was a process that we had
15 utilized during the Illinois Rivers project which had
16 approximately 100 public meetings and we have utilized
17 before in other projects.

18 The purpose for that is really twofold.
19 Number 1, so that we can understand who is attending
20 and in particular be able to cross-reference that
21 against the property records we have to get a good idea
22 of whether or not the property owners are actually in
23 attendance. And secondly, it was recommended by our
24 security people that we have a sign-in sheet?

25 (Exhibit Number 49 was marked for

1 identification by the court reporter.)

2 BY MS. HERNANDEZ:

3 Q. And would you agree this is -- this is
4 ATXI's response to Neighbors United Data Request 6-19?

5 A. Yes.

6 Q. And do you recognize this as the sign-in
7 sheet that landowners would have to sign before they
8 would be allowed to enter?

9 A. Yes.

10 Q. And there's some -- there's a few
11 sentences that appear above the sign-in sheet; is that
12 correct?

13 A. Yes.

14 Q. And one reads, "By signing below, I
15 acknowledge that I am at least 18 years of age and I
16 consent to and allow any use and reproduction by Ameren
17 transmission/ATXI of any and all photographs taken of
18 me during my participation in this Open House."

19 Did I read that correct?

20 A. Yes.

21 Q. And the second statement made there
22 reads, "I do hereby release to ameren/ATXI and its
23 agents, and employees all rights to exhibit this work
24 in print and electronic form publicly or privately. I
25 waive any rights, claims, or interest I may have to

1 control the use of my identity or likeness in whatever
2 media used and I understand there will be no financial
3 or other remuneration for recording me, either for
4 initial or subsequent transmission or playback."

5 Did I read that long sentence correctly?

6 A. Yes. That is it says.

7 Q. And would you agree that some landowners
8 that came to the open house were not allowed to attend
9 the open house because they would not sign this sign-in
10 sheet with these statements above?

11 A. There were people who were not allowed to
12 participate because they wouldn't sign-in. I actually
13 do agree we're reviewing our processes now, that those
14 two statements before the sign-in sheet which were
15 frankly a very, very small part of the purpose for the
16 sign-in sheet could -- would be found objectionable by
17 property owners.

18 I believe that was originally included at
19 the advice of our corporate communications and legal
20 teams because we do take photographs and do video that
21 we use on our Web site and for promotion of the
22 project. And the idea was to make sure that there
23 wasn't an issue with regard to who the non-Ameren
24 employees were that were in the picture or that they
25 would be entitled to remuneration.

1 But I can certainly see in reading those
2 two sentences how some people would find that part of
3 it objectionable and may not have objected to signing
4 the sign-in sheet if those sentences were removed. So
5 we are reviewing our processes at this point in time
6 for future public meetings to make sure that that
7 language isn't included.

8 **Q. And -- thank you. On the same day as the**
9 **open houses, I believe October 28th, 29th, and 30th of**
10 **2014, would you agree that you also held what**
11 **ATXI referred to as community representative forums?**

12 A. Yes.

13 **Q. And would you agree that those forums --**
14 **to those forums, you invited public officials,**
15 **representatives of local municipal groups, agency**
16 **representatives, and other community stakeholders?**

17 A. Yes, that was the intention.

18 **Q. And during these, I'll refer to them as**
19 **CRFs, ATXI invited the invitees with information on the**
20 **MTTP and allow them to walk through the public open**
21 **house meeting layout and speak to ATXI representatives;**
22 **is that correct?**

23 A. I believe that's the case. I wasn't
24 present, but that's my understanding.

25 **Q. And prior to ATXI sharing any information**

1 **with these attendees of the CRF, were the attendees**
2 **required to sign this sign-in sheet?**

3 A. I don't know. Mr. Jontry might be able
4 to answer that question.

5 **Q. All right. Thank you. You participated**
6 **in Case Number EA-2015-0145 before the Public Service**
7 **Commission; is that correct?**

8 A. If you could please tell me what the Case
9 Number -- besides the case number, the name of the case
10 or the topic of the case, please.

11 **Q. Sure. I have a copy of the application?**

12 A. Was that the Illinois Rivers project?

13 **Q. Let me make sure that's how you refer to**
14 **it. It would be the transmission line approximately**
15 **seven miles in length, including the switching station**
16 **that runs generally from the new switching station to**
17 **be constructed at Palmyra through Marion County and**
18 **extended across the Mississippi River to the Missouri**
19 **state line.**

20 A. Yes, that is the Missouri portion of the
21 Illinois Rivers project.

22 **Q. And you participated in that process?**

23 A. Yes.

24 MS. HERNANDEZ: I'd ask the Commission to
25 take judicial notice of the record in Case Number

1 EA-2015-0145.

2 MR. FITZHENRY: Your Honor, for what
3 reason?

4 MS. HERNANDEZ: For -- to show
5 Ms. Borkowski's participation in that case and also
6 attached to the application in that case was an assent
7 from Marion County that she signed, acknowledged, along
8 with the commissioner of that county.

9 JUDGE PRIDGIN: Commission will take
10 notice of its own record in EA-2015-0145.

11 MR. FITZHENRY: Would that be afforded an
12 exhibit number, Your Honor?

13 JUDGE PRIDGIN: It certainly can if you'd
14 like. It would be Exhibit Number 50.

15 MS. HERNANDEZ: I made copies. Would you
16 like for me to make copies to make as an exhibit?

17 MR. FITZHENRY: Not for my benefit,
18 unless you have further questions of the witness.

19 MR. LOWERY: Your Honor, if I may for
20 clarity, there's an exhibit that's being marked, I
21 think, that's the application in the case. It's not
22 the entire record in the case. I don't know what
23 exactly you've taken notice of.

24 JUDGE PRIDGIN: I've taken notice of the
25 entire file.

1 MR. LOWERY: Okay. Thank you.

2 (Exhibit Number 50 was marked for
3 identification by the court reporter.)

4 BY MS. HERNANDEZ:

5 Q. Ms. Borkowski, would you agree that the
6 permission ATXI seeks from the Commission in this case
7 to build a transmission line that will connect to the
8 line that was approved in the EA-2015-0146 case? That
9 being the application.

10 A. I think you've got the case numbers
11 backwards.

12 Q. Oh, yes. Yes, ma'am. You're correct.
13 Let me reread that to you, then, with that correction.

14 Would you agree that the permission
15 ATXI seeks from the Commission in this case is to build
16 a transmission line that will connect to the line that
17 was approved in EA-2015-0145?

18 A. Yes.

19 Q. And isn't it true that as part of that
20 case requesting the CCN, the application attached as
21 Appendix G, a copy of the assent of the County
22 Commission of Marion County for the project proposed in
23 EA-2015-0145?

24 A. Yes, the assent is attached.

25 Q. And your name appears on that assent on

1 **behalf of ATXI; correct?**

2 A. Yes.

3 MS. HERNANDEZ: I have no further
4 questions of this witness, but I would move for the
5 admission of Exhibits 46 through 50.

6 JUDGE PRIDGIN: Those have been offered.
7 Any objections?

8 MR. FITZHENRY: No objection.

9 JUDGE PRIDGIN: All right. Exhibits 46
10 through 50 are admitted.

11 (NU Exhibit Numbers 46 through 50 are
12 admitted into evidence by Judge Pridgin.)

13 JUDGE PRIDGIN: Any questions,
14 Mr. Chairman?

15 CHAIRMAN HALL: Just a few.

16 EXAMINATION

17 QUESTIONS BY CHAIRMAN HALL:

18 Q. **Good morning.**

19 A. Good morning.

20 Q. **If it is determined that this Commission**
21 **does not have jurisdiction over -- over this**
22 **transmission line, how will ATXI proceed with getting**
23 **the easements necessary to construct the line?**

24 A. It would be our expectation that we would
25 approach the property owners to voluntarily negotiate

1 for easements and to move the project forward on that
2 basis.

3 **Q. And if there was a property owner that**
4 **was not interested in selling his, her, or its**
5 **property, what would -- what would your next step be?**

6 A. I'm not an attorney, but it's my
7 understanding that under Missouri statute, ATXI would
8 have the ability to seek condemnation in the courts.

9 **Q. Turning to your direct testimony, I note**
10 **that you wear at least two hats. You're senior**
11 **vice-president for transmission at Ameren Services**
12 **Company and also president of ATXI; is that correct?**

13 A. Yes.

14 **Q. When you get your paycheck, what**
15 **letterhead is on that paycheck?**

16 A. I'm actually an employee of Ameren
17 Services Company, so my paycheck comes from Ameren
18 Services Company.

19 **Q. So does -- does ATXI have any employees?**

20 A. No.

21 **Q. Does it -- does Ameren Services own any**
22 **transmission in Missouri?**

23 A. Ameren Services does not own transmission
24 in Missouri. Currently, ATXI does and Ameren Missouri
25 does, of the Ameren affiliates. There are quite a few

1 Ameren subsidiary companies, many of whom do not have
2 employees and whose actions are carried out through
3 their agent Ameren Services Company. The services
4 company is established really for that very reason
5 because it's the most efficient way of carrying out
6 services for a number of different operating companies
7 in our subsidiaries.

8 **Q. So you said that there's transmission in**
9 **Missouri owned by ATXI and by Ameren Missouri; is that**
10 **correct?**

11 A. That's correct.

12 **Q. Okay. So why -- why did, if you know,**
13 **why did -- why is it not Ameren Missouri seeking this**
14 **certificate as opposed to ATXI?**

15 A. Some time ago, actually, I believe it may
16 have even been prior to when the multi-value projects
17 were approved by MISO, so I'm going to guess in 2010,
18 we were aware that MISO was likely to be moving forward
19 a portfolio of multi-value projects of which a
20 significant portion of that investment was going to be
21 assigned to Ameren, and in looking at basically the
22 capital needs of the various operating companies, we
23 opted to form a transmission-only company to make the
24 investment in these projects that were kind of the
25 regional multi-value projects so that Ameren Missouri

1 and likewise Ameren Illinois wouldn't have to divert
2 capital investment that they needed to invest in their
3 own -- in the case of Ameren Missouri generation,
4 reliability-based transmission, and distribution
5 system.

6 So effectively, it was a way of getting
7 the investment in the new transmission lines that are
8 the regionally based lines off of Ameren Missouri's
9 books and on to a different corporate entity that could
10 be financed at the Ameren Corp. level.

11 **Q. Why couldn't the investment take place**
12 **through -- through Ameren Missouri?**

13 A. Again, Ameren Missouri has a limited
14 amount of capital available. It's been investing in
15 distribution facilities, reliability projects for
16 transmission that are needed to serve Ameren Missouri
17 load are still also being invested in by Ameren
18 Missouri, and there have been quite a few investment
19 requirements both with regard to the Callaway nuclear
20 plant and the other fossil generation facilities with
21 regard to environmental investment.

22 So this was a way of not having to make
23 choices between who gets allocated the capital. You
24 remove one big source of capital allocation from the
25 Ameren Missouri picture and put it at the Ameren

1 Corp. level.

2 **Q. Now it seems to me that the reason why**
3 **the -- the entity before us seeking the certificate,**
4 **ATXI, is here is because there was a hope that if it's**
5 **-- if ATXI, which doesn't provide retail services in**
6 **Missouri, that this Commission would not have**
7 **jurisdiction over the line. I think you're telling me**
8 **that's not correct, that it was strictly an accounting**
9 **corporate decision and had nothing to do with a strict**
10 **-- with a strategy to avoid the jurisdiction of this**
11 **Commission.**

12 A. I can tell you absolutely that at the
13 time Ameren Transmission Company and Ameren
14 Transmission Company of Illinois were formed, that it
15 was not to avoid Commission jurisdiction.

16 **Q. Turning to page 18 of your --**

17 A. Can I supplement my answer? Do you mind?

18 **Q. No, not at all.**

19 A. Just to kind of do this. Obviously we
20 had a similar situation in Ameren Illinois. The way
21 the statutes work in Illinois, Ameren Transmission
22 Company of Illinois actually is a public utility under
23 the state of Illinois. So the Illinois Commission does
24 have certain authority to regulate, not rate authority,
25 the rate authority comes at the FERC level, but you

1 know, again, I -- the vast majority of ATXI's
2 investment is in Illinois and that is subject to ICC
3 jurisdiction, so it really wouldn't have made any sense
4 for us to be thinking we were going to try to avoid one
5 state's jurisdiction and not the others.

6 I think with regard to the litigation
7 that we have currently pending, again I'm not an
8 attorney, but as I understand it, the law is what the
9 law is. And either the Commission has jurisdiction or
10 it doesn't, and that's what the courts will approve.
11 But our business decision wasn't based on, you know, a
12 presumption that there was no jurisdiction.

13 **Q. Okay. I appreciate that additional**
14 **information.**

15 **In your surrebuttal on page 18, starting**
16 **at -- at line 18, you say: Our company insists that**
17 **its employees and agents treat others with dignity and**
18 **respect. As president of ATXI, I truly believe that**
19 **our people work very hard to do so and that we live up**
20 **to those ideals the vast majority of the time. To the**
21 **extent it is determined that a representative of**
22 **ATXI has acted in a manner that is inappropriate or**
23 **does not meet the standards we demand, I will take the**
24 **appropriate action to address that issue.**

25 **Did I read that correctly?**

1 A. Yes, sir.

2 **Q. Okay. As you know, there were -- there**
3 **were a number of complaints at local public hearings**
4 **about some of the conduct of ATXI representatives. Are**
5 **you familiar with some of those?**

6 A. Yes, I'm aware of that.

7 **Q. All right. So what have you done to date**
8 **to investigate those allegations?**

9 A. We have reviewed the notes that we kept
10 from the meeting. I believe there are certain
11 responses in data requests where certain witnesses,
12 including Mr. Jontry, explained some of the instances
13 that I think people felt were things where they were
14 being disrespected when the intention of the Ameren
15 employees was to give every property owner the
16 opportunity to have a chance to visit the stations and
17 ask questions.

18 And that I think where people became the
19 most upset was certainly with regard to the issue we
20 just talked about with Ms. Hernandez with regard to the
21 sign-in sheet, that people weren't allowed in if they
22 didn't sign in. We've taken the action at this point
23 in time to review that process. I myself see why those
24 two sentences people would find objectionable, so we're
25 reviewing our process in that regard.

1 Some of the other things we're trying to
2 do is to make sure that we explain to people that, you
3 know, when you've asked your questions and your
4 questions have been answered, that we need to give
5 people -- the other people the opportunity to get the
6 same attention that you have, and that, you know, kind
7 of give them the understanding that if you're not
8 finished up, we may need to escort you out.

9 I think other things were just the
10 communication about things like the security issues
11 where there was a concern because I do understand that
12 people are very passionate about their property, and
13 that this is upsetting to them. And we want to try to
14 hear those concerns, let them air those concerns, and
15 be sensitive to that.

16 But we also, given today's world, have
17 concerns about security, so when people are walking
18 around with backpacks and appear to go into other rooms
19 where they're not visible and kind of continue that, it
20 raises security concerns.

21 So I think maybe the process that we need
22 to change is to be much more open in communicating with
23 people the reason why, okay, you've asked this question
24 12 times of six different people, we need to move on,
25 so we need you to do this, or we're really concerned

1 about that backpack you have, would you mind leaving it
2 with our security people so that, you know, we're not
3 concerned about it anymore. Those kinds of actions are
4 things we've taken.

5 And in addition to that, both our
6 employees and our consultants prior to the next set of
7 public hearings will be undergoing more training about
8 how to deal with people, and you know, to try to do
9 that in a more sensitive way.

10 But I can assure you that -- well, first
11 of all, I'm very, very sorry to the people in this room
12 and other people if you were offended by our actions,
13 if you felt disrespected. That is absolutely contrary
14 to the culture I want to set and Ameren's values and
15 I'm very, very sorry for that. I also do understand
16 how upsetting this process is for you, and will try to
17 minimize that angst and concern in the future.

18 But those would be the steps that we're
19 taking.

20 **Q. Okay. Well, I applaud your willingness**
21 **to examine the necessity of that language on the -- on**
22 **the sign-in sheet. And I look forward to hearing the**
23 **results of that review at some -- some later date.**

24 **There were a number of individuals who**
25 **complained about being escorted out when they asked a**

1 question that they believed was not welcome, and I
2 think at least in a couple of instances, that was
3 questions about the county assent requirements. So is
4 it -- is it my understanding that from your
5 perspective, those questions had been asked repeatedly
6 and it -- it became a point of -- of obstructionism,
7 essentially?

8 A. That is my understanding. I wasn't
9 present at the meetings, so that's what I heard from my
10 staff. Mr. Jontry was present, so you can ask him
11 that, but it's my understanding that the question was
12 answered, first of all, because the people there at the
13 meeting were subject matter experts about the project,
14 not attorneys. So when people are asking these people
15 about a legal interpretation, I think what they told
16 them is we're not lawyers, and you know, we don't
17 believe this is a requirement but we're not attorneys.

18 But my understanding is a question was
19 asked repeatedly and that the person would go to other
20 representatives in the room to start the process all
21 over again. And again, that prevented other property
22 owners from having access to those people who were
23 there to ask -- to answer specific questions about the
24 project.

25 Q. Okay. Thank you.

1 CHAIRMAN HALL: I have no further
2 questions.

3 JUDGE PRIDGIN: Mr. Chairman, thank you.
4 Commissioner Rupp.

5 COMMISSIONER RUPP: Yes, thank you.

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER RUPP:

8 Q. **Good afternoon -- good morning. It's**
9 **still morning.**

10 A. Good morning.

11 Q. **Where can I find in any of the press**
12 **reports or any of the filed testimony the complaints**
13 **where people filed or made comments that they did not**
14 **get their questions answered because other people were**
15 **asking similar questions? I have not seen that**
16 **anywhere. Can you point that to me?**

17 A. I don't know specifically. Again, I
18 think Mr. Jontry did respond to some data requests.
19 I'm looking for help from my counsel.

20 MR. FITZHENRY: I believe so.

21 THE WITNESS: I don't, off the top of my
22 head, know what that data request is. If you bear with
23 me, I can flip through my booklet and locate it.

24 BY COMMISSIONER RUPP:

25 Q. **Your staff can -- your attorneys can do**

1 **that while I continue asking and somebody can just**
2 **point me to the place where I can find, because I had**
3 **not heard anybody complain that they had not gotten a**
4 **chance to talk to representatives because other people**
5 **were asking similar questions.**

6 A. Oh, I misunderstood your question. I
7 thought the question was where in the record did it say
8 that people were asking the same question over and
9 over.

10 Q. No, my question was: You made the
11 comment to Chairman Hall that other people were not
12 being able to speak to the representatives because
13 there was people going and asking the same question to
14 others. I have not seen anybody complain, I didn't see
15 any press reports of people saying that my questions
16 didn't get answered because of that. So I wanted to
17 see where you could show me that actually happened or
18 if that was just your opinion.

19 A. I don't know if there's anything in the
20 record. Mr. Jontry, again, was present at these
21 meetings. I think the assumption was that the lines at
22 the stations were backing up and that was the issue, so
23 obviously --

24 Q. So it wasn't due to the fact that this is
25 an important issue and people are compassionated. The

1 **fact that the lines were backing up was because people**
2 **were asking similar questions?**

3 A. The way the public meetings are set up,
4 there's a different station all around the room for a
5 different topic, so one might be vegetation management,
6 one might be pole construction, one might be the actual
7 routing stations that shows which properties are being
8 touched, and each of those has subject matter experts
9 staffed by Ameren and by our Burns & Mc consultants.
10 So depending on what information the people want to
11 find out, they go to different stations or can go to
12 hall the stations.

13 And my understanding is that the
14 individual that was asking about the application of the
15 statute was asking that at multiple stations where
16 those people weren't really equipped to answer it and
17 then would continue asking such that the people who did
18 want to find out information about that particular
19 topic area were kind of having to stand in line and
20 wait and not getting their opportunity in a timely
21 fashion.

22 **Q. So if someone asked one of your stations**
23 **a question, and that person said I'm unable to ask that**
24 **question, they're not allowed to go to the next station**
25 **and find out is that person able to ask? So I'm**

1 **failing to see how that person was wrong by going from**
2 **station to station asking a question when he was not**
3 **given, as you said, they weren't lawyers, so explain to**
4 **me how that person acted incorrectly by going to each**
5 **station asking that question trying to get his answer.**

6 A. Because the person was informed that
7 that's a legal question and there aren't lawyers here,
8 these people aren't going to be able to answer your
9 question.

10 Q. Okay. So he was supposed to just take a
11 blanket and hall these different stations and you
12 should just take our word for it that nobody here is
13 lawyers, you're not going to get your question
14 answered?

15 A. I think the people who were running the
16 public meeting were in a good position to know what the
17 subject matter experts at the various stations were
18 equipped to answer.

19 Q. Okay. And when we hold local public
20 hearings here as the commission, do you realize that
21 several hundred people come and a lot of people make
22 the same point over and over during -- during the time
23 that they're testifying before our commission?

24 A. Yes, sir.

25 Q. Have you ever heard any of the

1 commissioners say, you know, someone's already made
2 that point, we don't want to hear from you now, we're
3 not going to let you speak?

4 A. Not in that specific terminology, but
5 yes, I think that has been said that unless someone has
6 new points to make, you know, we've heard that already.
7 I think that has been said, yes.

8 Q. I believe it's been said if you testified
9 in a previous statement. We always let everyone come
10 forward and testify if they have relevant information,
11 and I've never seen a judge turn away someone that
12 says, you know, you can't testify.

13 A. I accept that at your word.

14 Q. Okay. I'm looking at the article in the
15 -- one of the newspapers that was handed out about the
16 case, comments from someone with the last name of Ladd.

17 A. Yes.

18 Q. And whom -- what organization does this
19 person work for, this Mr. or Mrs. Ladd? I'm looking
20 for the first time, I'm not seeing it.

21 A. Her name is Peggy Ladd and she did work
22 in my organization, but she is no longer employed by
23 Ameren.

24 Q. And why is she no longer employed by
25 Ameren?

1 MR. FITZHENRY: Your Honor, as you can
2 imagine, I'm sure the Commission has personnel issues
3 that it takes in-camera or closed session, I'm not sure
4 what you call it, but Ameren's policy would require
5 that any further discussion further about Mrs. Ladd's
6 employment or reasons for leaving the company be held
7 in confidence, and I'm not sure what the judge's -- we
8 could go in-camera is my understanding is the
9 appropriate procedure and ask those who were not
10 subject to the in-camera rules would have to leave the
11 room.

12 JUDGE PRIDGIN: If we're going to
13 continue that line of questioning, that might be the
14 wiser course. Why don't we go in-camera and we'll have
15 to clear the room to get those answers.

16 COMMISSIONER RUPP: All right. Let me
17 save everyone from having to stand up and leave here.

18 BY COMMISSIONER RUPP:

19 **Q. Let's look at one of the comments here.**
20 **Ms. Ladd was quoted in the organization as saying**
21 **project is moving ahead either way and it's up to the**
22 **residents to jump on board or jump ship. Is that**
23 **statement a statement that a president of ATXI that you**
24 **stand behind?**

25 A. Absolutely not.

1 **Q. Okay. And I'm sorry, what was**
2 **Ms. Ladd's role -- her title?**

3 A. She was the director of stakeholder
4 relations -- transmission stakeholder relations.

5 **Q. Stakeholder relations. Okay.**

6 A. I will say that I don't -- these words
7 are on the paper. I have no way of verifying whether
8 or not this is verbatim what was said.

9 **Q. Okay.**

10 A. In fact, I think if you take it in
11 context with the next sentence, assuming that when
12 these words were said, they were -- happened
13 consecutively like that. I think the context of the
14 next sentence says: I'm encouraging people to come out
15 and speak on their behalf, so the jump on board stuff
16 to me means get involved. The other part about jump
17 ship or the project moving ahead either way, I would
18 not support those statements.

19 **Q. I'm sorry, Ms. Borkowski, have you**
20 **testified before the Missouri Commission before?**

21 A. Yes.

22 **Q. And when was that?**

23 A. I don't remember the times. It goes back
24 quite a few years.

25 **Q. Has it been since I've been a**

1 **commissi oner?**

2 A. No.

3 **Q. Okay.**

4 A. I have filed written testimony.

5 **Q. But you have not been here?**

6 A. Yes.

7 **Q. And I listened to your response when you**
8 **were chatting with Chairman Hall about the people that**
9 **were asked to leave the hearing and summonsed by the**
10 **security. And I listened to your whole response and**
11 **I'm trying to understand it a little, so maybe you can**
12 **help me clarify. Do you believe that escorting every**
13 **individual that was escorted out of one of those public**
14 **hearings was the correct course of action for ATXI?**

15 A. I believe that at the time, the people
16 present and our security staff believed they were
17 following the procedures we had established. I
18 question now whether or not those procedures are
19 appropriate and we're reviewing them.

20 **Q. Okay. Did you have to sign a sign-in**
21 **sheet when you walked through that door?**

22 A. I did not.

23 **Q. Are you being video recorded?**

24 A. Yes.

25 **Q. You know, you said a word when you're**

1 contacting or chatting with Commissioner Hall, and the
2 word was "culture." And I am a huge believer in the
3 culture of our organization. Now, I just realized that
4 ATXI has no employees, so obviously there's no culture
5 in an employeeless organization. So you work for
6 Ameren Services. And where is your office located?

7 A. In the general office building on
8 Chouteau Avenue in St. Louis, Missouri.

9 Q. In St. Louis, Missouri. So do you -- do
10 you work for Ameren Illinois, Ameren Missouri, do you
11 work for the mother ship? Help me understand that.

12 A. Ameren Services is a corporation whose
13 specific intention is to provide services for half of
14 the operating companies and subsidiaries of Ameren, so
15 in that role, I manage the transmission assets of
16 Ameren Missouri and of Ameren Illinois and of Ameren
17 Transmission Company of Illinois.

18 Q. Okay. The individuals that were present
19 at all the local public hearings, whom do they work
20 for? Ameren Services, Ameren Missouri, Ameren
21 Illinois?

22 A. The vast majority of them were Ameren
23 Services employees. Again, we did have some of our
24 consultants from Burns & McDonald present as well.

25 Q. Okay. And this is an Ameren Illinois

1 kind of project, would you say that more than Ameren
2 Missouri?

3 A. Not the Mark Twain project, no. Do you
4 mean Ameren Transmission Company of Illinois?

5 Q. Well, here's what I'm trying to figure
6 out. I'm trying to figure out what is the culture of
7 your organization? And I firmly believe that the
8 culture of an organization is defined by the behavior
9 that the leadership is willing to tolerate. And if you
10 were able to tolerate the way that people were treated
11 at these local public hearings, the sign-in sheet
12 language, the yes it was okay to escort people out,
13 yeah, maybe our policy, that makes me call into
14 question the entire culture of your organization.

15 And I was hoping if this was Ameren
16 Illinois, I haven't dealt with that organization, so
17 that's my first impression is wow, what's the culture
18 of this organization? And I've dealt with Ameren
19 Missouri in the past, and now I'm trying to figure out
20 why this doesn't jive with the Ameren Services and the
21 Ameren Missouri organization that has been in here.

22 And so I'm trying to figure out what is
23 different, and now I'm finding out that it's an
24 employeeless organization, this ATXI, and so now I'm
25 re-questioning everything that I know about Ameren

1 **Services culture. And would you say that Ameren is a**
2 **regulated monopoly?**

3 A. Ameren Corporation?

4 Q. **Ameren Missouri and utility, are they**
5 **regulated monopolies in this country and this state?**

6 A. Ameren Missouri certainly is.

7 Q. **Okay. So Ameren Missouri is a regulated**
8 **monopoly. If I had a business that I had basically no**
9 **competition because no one could come into my area, I**
10 **was guaranteed certain number of clients if they needed**
11 **services, they had to come to me, I've owned businesses**
12 **before, I would have -- I would have given my left**
13 **pinky, probably my left hand to have that. And so when**
14 **you say the word "culture," when I look at an**
15 **organization that has that arrangement, I think they**
16 **should be benevolent. I think they should be bending**
17 **over backwards and taking care of the community, taking**
18 **care of the people, the people that are there are the**
19 **ones, and so I'm -- I'm now -- you brought up the word**
20 **"culture," so that -- and I'm trying to get to the**
21 **bottom of what happened in these local public hearings**
22 **and who were they -- who were the employees, where did**
23 **they come from?**

24 A. May I respond?

25 Q. **Sure. I'm wanting to know more about why**

1 **these actions, if you do give training to your people**
2 **beforehand, why these happened and what your response**
3 **was to it after it happened, other than we're reviewing**
4 **our processes.**

5 A. So first of all, Ameren Corporation and
6 all of its operating companies consider themselves to
7 have a single culture that really starts with our
8 leader, Maura Baxter. And as a part of that culture,
9 we subscribe to values. Included in those values are
10 respect, integrity, stewardship, accountability, and
11 others.

12 But specifically I think with regard to
13 -- so Ameren Services in and of itself I don't think
14 you would be looking for a specific culture. We do
15 care about our customers and our communities. These
16 same people who conducted the public hearings -- excuse
17 me, the public meetings for the Mark Twain project were
18 involved in hundred-plus public meetings in the
19 Illinois Rivers project. Exactly the same people. The
20 same leadership, the same people involved. We did have
21 a different project manager, but a lot of the people
22 that manned these stations went place to place.

23 And certainly we encountered people who
24 were impassioned and upset and we tried to deal with
25 them in a way that let them vent their frustration and

1 feel like they were heard. And I think we did that
2 successfully. And quite frankly, we didn't have issues
3 like this come up in the Illinois Rivers process.

4 So coming over to the Mark Twain project,
5 first of all, I think it's important to say that as a
6 part of our culture, we did this outreach by opening
7 these meetings up to the public and reaching out to the
8 community leaders of our own volition. We are not
9 required to do that by Commission policy or by statute.

10 So I think the very act of reaching out
11 to the communities, holding the meetings, sending
12 information to folks, offering them the opportunity to
13 come in and give us input, the level of detail we went
14 to in trying to record their input, working with Burns
15 & McDonald, I think speaks to the fact that we do care
16 and we were trying to do the right thing.

17 I don't know what happened at these
18 meetings. If people were disrespected, as I said, I
19 sincerely apologize because that is not what we're
20 trying to portray, that is not the culture we want
21 people to see us by. But you know, that being said, I
22 think in many instances, there was miscommunication and
23 assumptions about the intent that weren't the true
24 intent.

25 And some of that may have been because of

1 the people that were escorted out, and again, I think
2 we're revisiting that, trying to address it. But it
3 was never our intention to disrespect people or not
4 listen to people's concerns.

5 **Q. All right. I do not believe that it**
6 **would be. That would be so silly, would not be -- that**
7 **would be self-defeating. But I strongly encourage you**
8 **to, since you are the president of ATXI, to find out**
9 **what happened. You said you don't know what happened.**
10 **But you videoed it, there was people -- apparently the**
11 **press, there's numerous press reports. So the press**
12 **knows what happened, so you need to know what happens.**

13 **And I also don't think from what I took**
14 **from some of your statement was, that the fact that you**
15 **held a local public hearing was, like, kind of patting**
16 **yourselves on the back that you did some outreach. I**
17 **think you are a monopoly and you are -- you should be**
18 **out there holding local public hearings.**

19 **So I would hope that you would continue**
20 **to do that, even if it is not in a Commission rule, you**
21 **should make that just a standard bear of the culture of**
22 **your organization that we want to be out there and not**
23 **using it as look how -- we don't have to do this, but**
24 **we're doing this because we're great.**

25 **A. No, because we believe it's the right**

1 thing to do, not because we believe we're great.

2 **Q. Okay. Well, and I would -- when do you**
3 **think you're going have a decision made on the**
4 **reviewing of these processes and the language and since**
5 **it's under review, when do you think you're going to**
6 **have that?**

7 A. I can tell you that the two sentences
8 that are on the sign-in sheet are gone. I think we
9 will continue to have sign-in sheets. We're still
10 trying to decide how we make sure that everyone who's
11 present is safe and accounted for, and so whether or
12 not we make the sign-in sheet completely optional,
13 that's kind of a hard thing to do because then we don't
14 know who's been there, we don't even know what property
15 owners we've had input from.

16 So I'm not going to say we're going to do
17 away with the sign-in sheet, but I think we will also,
18 again, in the event where we do have an instance where
19 we feel like a property owner has had their opportunity
20 to have their say and might now either be causing a
21 security issue or creating an issue with other people's
22 ability to have their say, we have to be more open and
23 communicate with them directly about that so that
24 there's no misunderstanding about what's happening, if
25 that action needs to be taken.

1 I'm sure you understand, relative to the treatment of
2 those people who attended the local public hearing is
3 important, is because it paints your company in a way
4 that I'm sure you-all don't wish to see and that we as
5 Commissioners don't want to believe is the overall way
6 that we will expect those that you have to interact
7 with to be treated.

8 So although you say that you don't know
9 the specifics, but you've heard of different things
10 happening, I would like to know what those policies are
11 that you mentioned earlier, that ATXI has a security
12 policy in place as to what constitutes removing a
13 person from a hearing. Can you tell me what those
14 policies are?

15 A. They are not a written procedure, but
16 prior to each of the public hearings, our security team
17 gives us a briefing about where they will be, what
18 actions they will be prepared to take, how we signal
19 them if we think we're in trouble, things like that.

20 And in addition to that, you know, they
21 basically say that one of the things that are on the
22 lookout for is -- is large bags that people bring in,
23 which again sometimes they bring in, but they will
24 probably watch those people more carefully.

25 And then the other process is if an --

1 any of our team feels that an individual is in some way
2 becoming threatening or, you know, has had their
3 opportunity to have their say and to ask their
4 questions, there would be an instance where the
5 security team would come over and my understanding is
6 that they first talk with the individual about expected
7 behaviors, but barring that, would escort someone out
8 if it appeared that the person was becoming disruptive
9 to the proceeding or was in any way threatening the
10 safety of the people, both the Ameren people and the
11 other people there.

12 **Q. So you do look at removing a person from**
13 **a hearing if they constitute what you hall think is**
14 **threatening behavior?**

15 A. That would be the judgment of our
16 security people, yes.

17 **Q. And are the security people ATXI**
18 **employees or were these -- are these contract companies**
19 **that participated in those hearings with you?**

20 A. There was combination of Ameren Services
21 security employees and then generally speaking, the
22 other folks, and I have to ask Mr. Jontry or someone
23 else to verify this specifically with regard to the
24 Mark Twain meetings, but generally they're off duty
25 policemen or sheriff's deputies in the local area that

1 come to provide additional security.

2 **Q. Okay. So does that mean that you come to**
3 **these meetings expecting disruptive behavior or**
4 **threatening behavior?**

5 A. No, ma'am. It only means that whenever
6 you have large gatherings of people available, it's the
7 prudent thing to do in this day and age.

8 **Q. My next question would be regarding the**
9 **comments that you made that people would ask the same**
10 **questions over and over at different stations, and then**
11 **the reason their questions could not be addressed is**
12 **because the folks there were not legal staff and could**
13 **not address those questions.**

14 **Certainly when you're dealing with these**
15 **types of proceedings or these hearings, you would**
16 **expect, I think, that people might have some legal**
17 **questions, especially since we're dealing with property**
18 **owners. Is the normal procedure not to have your legal**
19 **staff or someone in place who could at least say we**
20 **don't have the appropriate legal staff here, but would**
21 **you give us your name and your question and your**
22 **contact information and we can't serve as a legal**
23 **adviser to you, but someone can get back to you with a**
24 **general answer to a general question? Would that not**
25 **make sense to have someone at least in place to offset**

1 **those concerns that people might have?**

2 A. So on a couple of issues. First of all,
3 with regard to the property owners and issues they may
4 have about real estate questions, we do have people
5 there that are prepared to answer their questions about
6 real estate and about easements and things like that.
7 So that part of it is addressed.

8 This particular issue was a gentleman who
9 was asking a question about specifically about a
10 Missouri statute, and we do offer to take their name
11 and their contact information and have somebody get
12 back to them, but in this case, my personal opinion is
13 he was trying to make a point.

14 We appreciated that. Again, he has the
15 opportunity to have his input and to vent, but after
16 that, it became, you know, kind of a constant
17 repetition that was interfering with the ability of the
18 other people at the stations to answer the questions of
19 the people who were there to get specific information
20 about the project.

21 So we certainly can take it under
22 advisement about having an attorney present in the
23 future to address legal questions. I think probably
24 all that would happen is you get into a debate about
25 my legal interpretation versus your legal

1 interpretation, but we could certainly have a station
2 for legal questions, if required.

3 Q. Well, I don't assume that your legal
4 staff could give legal answers to a property owner
5 unless it's something pretty general, such as easement
6 questions, something like that. But at least if your
7 goal is to not create animosity and bad feelings
8 between the people that you have to work with to get
9 your -- get your message over to, you know, it seems
10 like an olive branch or at least offering something
11 substantial to calm people's fears or concerns might be
12 helpful.

13 And so I'm not suggesting that you
14 provide legal expertise to people, but at least for one
15 to say that's a legal question, let us take it back. I
16 just wonder if in general, you -- you-all think of that
17 idea or you say I can appreciate what where you're
18 coming from and your suggestion that maybe this is
19 something you can do in the future.

20 But I just think that it left people with
21 a bad taste in their mouth. And when I looked at one
22 of the hearings, I believe it was in Shelbyville, that
23 was one of the complaints that we heard over and over
24 again about the very poor treatment of the residents of
25 those counties that you're looking at up there in

1 **northern Missouri .**

2 A. I appreciate that, Commissioner, and
3 again, that is -- was not our intention and in fact,
4 was not our practice. In the hundred meetings we had
5 in Illinois Rivers, you know, I appreciate the people's
6 concerns and we're looking to address it. It will
7 never happen again. Obviously we completely understand
8 that if this project receives its certificate and moves
9 forward, that these with people we'll continue to deal
10 with, both the property owners and certainly the
11 commissioners and community leaders in the area.

12 Q. Okay. Well, you know, it's -- I think
13 **it's very interesting that of all the meetings, I**
14 **think you said about a hundred, maybe, in Illinois and**
15 **you didn't have those kinds of concerns; is that**
16 **correct? Was it about a hundred meetings?**

17 A. Yes, the project in Illinois crosses 30
18 counties and is about 385 miles long, so obviously it's
19 a much larger, and there is a requirement in Illinois
20 to have public meetings before filing the certificate.
21 Again, we chose to use the same or similar process over
22 on the Missouri side just because we thought it was the
23 right thing to do, but certainly we always had people
24 who were, you know, pretty upset, or you know, when
25 they got there about the process, but I would say, you

1 know, there were probably things at the commission
2 level where people complained about where the route was
3 and things like that, but I honestly don't recall
4 anything in the record in Illinois where people
5 indicated that we disrespected them in any way.

6 **Q. Okay. Well, you know, on more than one**
7 **occasion during your testimony today, you said that you**
8 **had these meetings in Missouri because it was the right**
9 **thing to do. I would venture to suggest that it's**
10 **really the only appropriate thing to do.**

11 A. Yes, ma'am.

12 **Q. Because if you don't hold these hearings,**
13 **people can only go off of their speculation and, you**
14 **know, Missouri is the Show Me State, and we have that**
15 **name for a reason, and I think that it's only**
16 **appropriate that as you go forward, that people do have**
17 **an opportunity to voice their opinions and to get more**
18 **information.**

19 COMMISSIONER COLEMAN: Thank you, Judge.
20 That's all I have.

21 JUDGE PRIDGIN: Commissioner, thank you.
22 Commissioner Rupp, do you have anymore questions?

23 COMMISSIONER RUPP: Yeah, I appreciate
24 that. I have something that Commissioner Coleman said
25 that got me thinking.

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FURTHER EXAMINATION

QUESTIONS BY COMMISSIONER RUPP:

Q. When you have the security forces there or whatever, walk me through the process of how someone is -- the decision-making process to remove someone.

A. Well, it would certainly depend on the context of the situation. Generally speaking, there's -- really the people that are in charge of the process, if you will, would be our director of stakeholder relations, our project manager, Mr. Jontry in this case, and we then usually have one of the lead people from Burns & Mc on the process.

And they tend to be people who move around the room, not assigned to a specific station and try to address issues where someone, you know, needs kind of a -- someone to step in. So typically what would happen is if someone were engaged with someone and getting very upset and potentially threatening something, then one of the three of them would either signal to the security guard or if someone was engaged, one of the others would walk over to the security team and say it looks like we may have a problem here.

Typically, what the security guard does is make themselves more present right near the -- you

1 know, the conversation or incident going on to kind of
2 observe and make sure, you know, that they think things
3 are safe. In the specific instance -- one specific
4 instance in this case where I believe there were people
5 with a backpack going in and out of a restroom, that
6 one of the individuals on our team approached the
7 security guard and said they were concerned about it.
8 I believe that the security guard then directly
9 approached the people and said, you know, it's time for
10 you to leave.

11 **Q. Okay. So you're telling me that people**
12 **are being -- are being asked to leave for security**
13 **reasons, but the three people that you named are not**
14 **security people. They're consultants, they're**
15 **community relations people.**

16 **So in your process of deciding if someone**
17 **needs to leave, when are you bringing in the security,**
18 **the hired security people whose professional job is to**
19 **provide security to help with that decision? Because I**
20 **looked at some of the testimony and, quote, like an**
21 **Ameren representative asked a policeman to escort my**
22 **husband outside. So when -- if it is a security issue,**
23 **when do the security professionals, you know, weigh in**
24 **on yes, this is someone that is a security threat or is**
25 **it more a consultant or public relations person that**

1 **wants to have someone removed?**

2 A. The instances I mentioned is where it's
3 truly a concern for a physical threat. The incident
4 you mentioned was the concern was the person was
5 becoming an obstruction to the -- the public meeting
6 achieving its purpose, which was allowing half of the
7 people to have access to the stations.

8 **Q. Okay, so --**

9 A. So in that instance, I think the person
10 who was the non-security person said to security, it's
11 time for this person to leave.

12 **Q. Okay. And why -- why was that person**
13 **escorted -- asked to leave? Why couldn't the security**
14 **say okay, you've already had it, you've asked your**
15 **question. You can stay in the room and sit here with**
16 **them, you do not have to vacate the premises. Why was**
17 **it a default that they had to be escorted out of the**
18 **building?**

19 A. I suggest maybe you ask Mr. Jontry the
20 specifics of the issue. I wasn't present.

21 **Q. Who's Mr. Jontry's boss?**

22 A. Ultimately, I am Mr. Jontry's boss.

23 **Q. Okay. I'm going to ask you the question,**
24 **then.**

25 A. All I can say is --

1 **Q. How many people in hall your hearings**
2 **were asked to leave?**

3 A. I don't know.

4 **Q. Why do you not know that question?**

5 A. I don't know.

6 **Q. If -- if your in the public hearing for**
7 **your organization and security has to be called and**
8 **people have to be escorted out of the building, why was**
9 **that information not shared up the line somewhere in**
10 **your organization that you should know that at this**
11 **hearing, we had these three incidences, there was a**
12 **report filed, why is there not a number that you know**
13 **of?**

14 A. First of hall, the security isn't called,
15 they're already present. Second of hall, they're not
16 hall due to security concerns. I believe that
17 Mr. Jontry answered a data request, which I can ask my
18 counsel to find, but the issues typically are that the
19 person has had their questions asked and answered,
20 they're asked courteously do you have any additional
21 questions beyond the one you're currently asking over
22 and over.

23 **Q. You said security's not called, but you**
24 **said you have people go over and alert the security**
25 **guard and call them over?**

1 A. When you said security is called, I
2 interpreted that to mean that we make a phone call and
3 call a Sheriff's office.

4 **Q. You already have security there?**

5 A. We have security present, yes.

6 **Q. So you do not know if -- if law**
7 **enforcement or security personnel have to detain**
8 **someone or remove someone from the premises at Ameren's**
9 **headquarters, at the Callaway nuclear plant, there's no**
10 **record, there's no report filed in your organization**
11 **that those incidents happened?**

12 A. I can't speak to the other instance that
13 you talked about. I'm sure if there's a physical
14 threat, there is some sort of report issued. In these
15 instances, we're not on Ameren property. We do have
16 both Ameren personnel as security and -- and police.
17 We are generally not alleging some sort of breaking of
18 the law, so I don't believe there's a police report
19 necessarily filed. But I do not have the specific
20 count of how many people were escorted from each
21 meeting.

22 **Q. Do you get a report on how did the**
23 **meeting go?**

24 A. Yes.

25 **Q. And it was not mentioned that there was**

1 **people escorted out during the meeting?**

2 A. Generally, there would be something that
3 says we did have to escort someone out. I did not keep
4 a count.

5 **Q. Thank you.**

6 JUDGE PRIDGIN: Thank you. Any further
7 bench questions? All right. Thank you. I normally
8 don't like to break in the middle of a witness being on
9 the stand, but it's about 20 after 12:00 and we're
10 going to recess for lunch here. And when we resume,
11 let's resume at 1:30. And Ms. Borkowski, you'll still
12 be on the stand for recross and redirect. Anything
13 else before we recess for lunch? All right. Thank
14 you. We will stand in recess until 1:30. Thank you.
15 We're off the record.

16 (A lunch break was held.)

17 JUDGE PRIDGIN: Good afternoon. We are
18 back on the record. When we broke for lunch, I believe
19 bench questioning had ended for Ms. Borkowski. We're
20 back to recross based on bench questions. Anything
21 further from counsel before we proceed with that? All
22 right. Mr. Williams, any questions?

23 MR. WILLIAMS: No, thank you.

24 JUDGE PRIDGIN: MISO?

25 MR. SMALL: No, Your Honor.

1 JUDGE PRIDGIN: Thank you. United for
2 Missouri.

3 MR. LINTON: No questions.

4 JUDGE PRIDGIN: Public counsel?

5 MR. OPITZ: No, Your Honor.

6 JUDGE PRIDGIN: Neighbors United?

7 MS. HERNANDEZ: No, Your Honor.

8 JUDGE PRIDGIN: Redirect?

9 MR. FITZHENRY: Just a few, Your Honor.

10 REDI RECT EXAMI NATION

11 QUESTIONS BY MR. FITZHENRY:

12 Q. Mr. Borkowski, you were asked a number of
13 questions by Chairman Hall and then later Ms. Hernandez
14 about the county assents issue. Do you recall those
15 questions?

16 A. Yes.

17 Q. And what implications, practical or
18 otherwise, would there be from ATXI's perspective in
19 terms of acquiring those consents as well as getting a
20 certificate in a timely fashion?

21 A. I'm very concerned about the practical
22 implication of conditioning the certificate on having
23 the assents from the counties. I -- my opinion is it's
24 likely to cause significant delays in the project. The
25 certificate is needed as to find a finding in the

1 public interest that the project, you know, needs to
2 move forward, it's necessary, it's economical and so
3 forth.

4 The assents, hall they have to do with is
5 the ability to either put a pole or run conductor
6 across county roadways. By actually conditioning the
7 effectiveness of the certificate on the acquisition of
8 the assent from the county, it's effectively delaying
9 our ability to commence construction in the whole
10 county when hall we're trying to do is to make sure
11 that we have an assent to cross a public roadway.

12 Under normal certificates, if we receive
13 the certificate without the condition of the assents,
14 and again we've already agreed or reached agreement
15 with Staff on the other conditions that were discussed
16 in Staff witness Beck's testimony, but this particular
17 one is troubling because if we did have to proceed with
18 getting those assents, we'd really be unable to
19 commence with the construction schedule that we've
20 currently laid out.

21 Normally what we would do is upon
22 receiving a certificate, begin acquiring the
23 right-of-way and as we acquired right-of-way and had
24 the appropriate situations worked out with hall of the
25 other, you know, environmental issues and what have

1 you, we would commence construction of the foundations
2 and ultimately go to poles and what have you.

3 If we were having to hold out that
4 process to get the county assents, it could effectively
5 delay the project. Mr. Schatzki's testimony indicates
6 that every year delay costs Missouri's ratepayers,
7 customers, \$100 to \$200 million per year and that's not
8 something you will ever get back.

9 It also is going to delay the ability of
10 wind to connect. We already have a request in the MISO
11 queue for 400 megawatt wind farm to connect to the Mark
12 Twain project near Zachary. All of this is put in
13 jeopardy and potentially delayed if one were to attach
14 the conditions that Staff has specified to the
15 certificate.

16 Clearly before we actually move forward
17 with putting any kind of a line across a roadway in a
18 county, we will have to get that county's assent, but
19 to condition the certificate on that, I just think is
20 bad policy, bad energy policy for the state.

21 **Q. Thank you, Ms. Borkowski.**

22 MR. FITZHENRY: Your Honor, may I
23 approach the witness?

24 JUDGE PRIDGIN: You may.

25 MR. FITZHENRY: This will be marked as

1 Exhibit 51.

2 (Exhibit Number 51 was marked for
3 identification by the court reporter.)

4 MR. FITZHENRY: Your Honor, I'm going to
5 ask you to take judicial notice of this Exhibit 51.
6 Like Exhibit 48, this too was submitted as part of the
7 MPSC public portal for comments and so forth and it was
8 identified as number P201503472, and then I'd like to
9 follow-up with a few questions to Ms. Borkowski.

10 JUDGE PRIDGIN: Any objections? Hearing
11 none, it's noted. We'll take judicial notice of that
12 document, Exhibit 51.

13 MR. FITZHENRY: Thank you, Your Honor.

14 BY MR. FITZHENRY:

15 **Q. Ms. Borkowski, do you still have**
16 **Exhibit 48?**

17 A. Yes.

18 **Q. Would you please turn to page 3 of that**
19 **exhibit?**

20 A. Okay.

21 **Q. Now I'd like you to look at Exhibit 51 as**
22 **well. What is the date of that exhibit?**

23 A. 4/28/15.

24 **Q. And who is the purported author of that**
25 **letter?**

1 A. It's signed by Ashley Haer, H-a-e-r.

2 Q. **And does Ms. Haer give an address?**

3 A. Yes, it's 29688 White Deer Lane,
4 La Plata, Missouri 63549.

5 Q. **And does Exhibit 51 also show a date when**
6 **it was received by the Public Service Commission?**

7 A. Yes, May 18th, 2015.

8 Q. **And again, I'd like to you refer back to**
9 **Exhibit 48, please.**

10 A. Okay.

11 Q. **What is the date of that letter?**

12 A. January the 13th, 2016.

13 Q. **And who is the purported author of that**
14 **letter?**

15 A. Andrew Haer, H-a-e-r.

16 Q. **And what is Mr. Haer's address?**

17 A. 29688 White Deer Lane, La Plata, Missouri
18 63549.

19 Q. **Thank you, Ms. Borkowski. That's all**
20 **the questions I have for you.**

21 JUDGE PRIDGIN: Okay. Thank you. You
22 may step down. Thank you very much. The next witness
23 is Dennis Kramer.

24 (The witness was sworn by Judge Pridgin.)

25 JUDGE PRIDGIN: Mr. Lowery, when you're

1 ready, sir.

2 MR. LOWERY: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. LOWERY:

5 Q. Would you please state your name for the
6 record?

7 A. My name is Dennis Kramer, last name
8 spelling K-r-a-m-e-r.

9 Q. Mr. Kramer, on whose behalf are you
10 testifying in this case?

11 A. ATXI.

12 Q. Did you cause to be prepared for filing
13 in this docket direct testimony and surrebuttal
14 testimony that has both an HC and an NP version and has
15 been marked for identification as Exhibits 3 and 4
16 respectively?

17 A. Yes, I did.

18 Q. Do you have any corrections to that
19 testimony?

20 A. No, I do not.

21 Q. If I were to pose the questions that
22 appear in Exhibits 3 and 4 to you today, would your
23 answers be the same?

24 A. Yes, they would.

25 MR. LOWERY: With that, Your Honor, I

1 offer Exhibits 3 and 4 -- excuse me, yes, 3 and 4 into
2 the record and tender Mr. Kramer for cross-examination.

3 JUDGE PRIDGIN: All right. Any
4 objections? Hearing none, Exhibit 3 is admitted,
5 Exhibit 4-NP and HC is admitted.

6 (ATXI Exhibit Numbers 3, 4-NP and 4-HC
7 were received into evidence by Judge Pridgin.)

8 JUDGE PRIDGIN: Cross-examination, Staff?

9 MS. MYERS: No questions, Your Honor.

10 JUDGE PRIDGIN: MISO?

11 MR. SMALL: Thank you, Your Honor. I
12 have a few questions.

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. SMALL:

15 Q. Good afternoon, Mr. Kramer.

16 A. Good afternoon.

17 Q. Jeff Small, representing MISO.

18 Mr. Kramer, do you have the pre-filed
19 surrebuttal testimony of Bill Powers with you on the
20 stand? I believe that's Exhibit 43.

21 A. Yes, I do.

22 Q. Could you please turn to page 5 of that
23 testimony?

24 A. I am there.

25 Q. And I'm looking at lines 5 and 6 of -- on

1 page 5. The answer to the question says: 100
2 megawatts of demand response is more than four times
3 the 24 megawatts of increased import capacity and so
4 forth and so on on line 6. Do you see the reference to
5 24 megawatts?

6 A. Yes, I do.

7 Q. And there's a footnote there,
8 footnote 10. It's reference to Exhibit PE-42. Do you
9 see that?

10 A. Yes, I do.

11 Q. And are you familiar with Exhibit PE-42
12 from the testimony of Mr. Powers? And if you have it
13 on the stand, I'd appreciate it if you'd open up to
14 that.

15 A. Yes, I do.

16 Q. And is that a request from the Commission
17 Staff to ATXI, a data request to which you are the
18 responsible ATXI witness for responding?

19 A. Yes, I am.

20 MR. SMALL: Your Honor, I'm not going to
21 mark this as an exhibit because it's already part of
22 the testimony, but for everybody's convenience, I have
23 copies of it, if that would be the procedure.

24 JUDGE PRIDGIN: That's certainly fine.

25 Thank you.

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BY MR. SMALL:

Q. And Mr. Kramer, you have PE-42 with you; is that correct?

A. Yes, I do. I'm looking at it now.

Q. Mr. Kramer, well, let's make sure.

MR. SMALL: If I may, Your Honor, approach?

JUDGE PRIDGIN: You may.

BY MR. SMALL:

Q. Just to make sure, Mr. Kramer, the handout that I just gave you is the same response not marked as an exhibit, but is the same data response that you just mentioned you are responsible for?

A. Yes, it is.

Q. Okay. And so that is identified as a response to Michigan Public Service Commission Request 25 identified in connection with Staff Shawn Lange; is that correct?

A. I believe it's the Missouri Public Service Commission, but it is Shawn Lange, yes.

Q. What did I just say?

A. Michigan.

Q. I'm very sorry. Now, if you could keep your -- your place in the -- in the surrebuttal

1 **testimony, and go to your testimony, your direct**
2 **testimony at the bottom of page 14 and the top of**
3 **page 15.**

4 A. Okay. I am there.

5 Q. **And at that point in your testimony, you**
6 **are discussing, among other places in your testimony,**
7 **the benefit costs or benefits and the costs of the MVP**
8 **portfolio; is that correct?**

9 A. Yes, I am.

10 Q. **And have you reviewed the MISO reports on**
11 **the benefits and costs associated with the MVP**
12 **portfolio?**

13 A. I am familiar with them, yes.

14 Q. **Okay. Now, with the 24 megawatt answer**
15 **in mind we just looked at in Mr. Powers' testimony in**
16 **which he referenced this data response that you're**
17 **responsible for, are the MVP benefits that you reviewed**
18 **as part of the MISO reports, would they be consistent**
19 **with a -- the 24 megawatt added capacity if that 24**
20 **megawatts was available during all hours of the year?**

21 A. The 24 megawatts that was quoted and
22 provided in the data request is MPSC 0025 was for a
23 specific scenario which would be at system peak, which
24 occurs for so many hours in a day -- in a year, rather,
25 and not an extremely large period of time, but several

1 days of the year.

2 When I realized from Mr. Powers'
3 surrebuttal testimony and other data requests that that
4 24 megawatts as far as import capability was being
5 construed as a -- the limit on the amount of wind that
6 wind energy that Ameren Missouri would be importing or
7 could import through the Mark Twain project, I realized
8 that my answer was actually incomplete in MPSC 0025.

9 Subsequent, then, to that, I directed my
10 Staff under my direction to perform another analysis,
11 which was a supplemental support or sending of
12 supplemental response to MPSC 0025, which explains that
13 what the actual numbers should be, if you look at wind
14 import capability from other regions of MISO,
15 especially the upper Midwest, which is where the wind
16 is located in MISO, more so than you would expect
17 importing from the east, when we ran that scenario for
18 the shoulder months, it's very important to distinguish
19 between on peak and shoulder periods of time. Shoulder
20 periods 70 to 80 percent of peak and that is when the
21 wind generation is at its highest, which is assumed to
22 be 90 percent of the nameplate capacity.

23 So as opposed to on peak, when it's only
24 at most 20 percent. On peak hot days, you don't get
25 very much wind because there's not much wind blowing.

1 On shoulder hours of the year, you get a lot of wind
2 blowing because it's in the evenings or in the mornings
3 before sun up and it's also in the spring and fall.

4 The results of that analysis using
5 shoulder periods of time and with the wind at 90
6 percent indicated that with the Mark Twain project in
7 service as opposed to out of service, in other words
8 the system being identical but for the Mark Twain
9 project being in service, that brought into Missouri at
10 a minimum 290 additional megawatts of energy from the
11 upper Midwest region where the wind is going to be
12 generated. That would flow into Missouri that would
13 not be flowing if Mark Twain was not there.

14 MR. SMALL: Your Honor --

15 THE WITNESS: And I guess in summary, to
16 summarize, therefore my 24 megawatts is not indicative
17 of the value of the MVP for the value proposition that
18 you described -- that I describe on pages 14 and 15 of
19 my direct testimony.

20 MR. SMALL: If I may, Your Honor,
21 approach.

22 JUDGE PRIDGIN: Yes, you may.

23 MR. SMALL: And I'd like to mark an
24 exhibit. Is that 52 that we're up to?

25 JUDGE PRIDGIN: Yes, sir.

1 (MISO Exhibit Number was marked for
2 identification by the court reporter.)

3 BY MR. SMALL: .

4 Q. Mr. Kramer, the response that you gave
5 essentially was recorded in a supplemental data
6 response; is that correct?

7 A. Yes, it was, to MPSC 0025.

8 Q. Okay. So did I understand that you've --
9 in order to have the response properly reflect the
10 connection with the benefit of the MVPs, your
11 supplemental response should be understood to be your
12 answer and ATXI's answer?

13 A. That's correct. The original question
14 MPSC 0025 was on a specific instance. Adding to this
15 is what fills out the full record, so to speak, of the
16 benefit of the MVP and is reflective of its full
17 capability.

18 MR. SMALL: Your Honor, I have no further
19 questions.

20 JUDGE PRIDGIN: All right. Thank you.
21 United for Missouri?

22 MR. LINTON: I have no questions.

23 JUDGE PRIDGIN: Public Counsel?

24 MR. OPITZ: No questions, Your Honor.

25 JUDGE PRIDGIN: Neighbors United?

1 MS. HERNANDEZ: Thank you.

2 CROSS-EXAMINATION

3 QUESTIONS BY MS. HERNANDEZ:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. **Would you agree that the Mark Twain**
7 **transmission project will be in SERC's area of**
8 **jurisdiction? For the court reporter, S-E-R-C?**

9 A. ATXI is a member of SERC and so
10 facilities owned by -- owned by ATXI will be under or
11 in the SERC ERO, energy regulatory organization. If
12 ATXI is a member of SERC, if it is, then you're under
13 its area; correct.

14 Q. **Okay. So you would agree that SERC is a**
15 **regional entity that has been delegated authority by**
16 **NERC to monitor and enforce NERC reliability standards?**

17 A. It is one of several. There is
18 Reliability First, there's I think three, actually,
19 that MISO members are members of, but yes, it's one of
20 several.

21 Q. **Okay. And SERC covers the southeast US,**
22 **including Missouri?**

23 A. Yes. Well, it includes the section of
24 Missouri that's Ameren, yes.

25 Q. **Okay. And you would agree that WECC is a**

1 **regional entity that has also been delegated authority**
2 **by NERC to monitor and enforce NERC reliability**
3 **standards?**

4 A. I'm not really familiar with WECC. I'm
5 aware it's Western Energy -- Western some counsel, but
6 I'm not personally involved or familiar with them.

7 **Q. Would you agree that Ameren Missouri's**
8 **not required by NERC to develop mitigation measures for**
9 **Category D contingencies?**

10 A. I would have to look. I'm not aware of a
11 Category D contingency that requires immediate
12 mitigation, but I would have to -- I'd have to look at
13 the document.

14 **Q. Okay.**

15 A. Category Ds are usually considered less
16 severe.

17 **Q. Would you agree with me that a definition**
18 **of a Category D contingency is, let's see, a Category D**
19 **contingency is an extreme event with no specific**
20 **performance requirements or the other than evaluation**
21 **for risk and consequences?**

22 A. I would have to review the NERC
23 transmission planning standards before I could agree.
24 I do not know.

25 **Q. Okay. Did you learn as part of this**

1 **proceeding that WECC had categorically reclassified in**
2 **2012 all N2 events for high voltage transmission lines**
3 **not on the same tower or in the same right-of-way?**

4 MR. LOWERY: Objection, assumes facts not
5 in evidence. I don't know that there's any pre-filed
6 testimony that establishes that all of anything was
7 reclassified.

8 JUDGE PRIDGIN: Could you ask the
9 question again, Ms. Hernandez?

10 BY MS. HERNANDEZ:

11 **Q. Admit that you learned in this proceeding**
12 **that WECC had categorically reclassified in 2012 all N2**
13 **events for high-voltage transmission lines not on the**
14 **same tower or on the same right-of-way.**

15 MR. LOWERY: Same objection, I think it
16 assumes facts not in evidence.

17 JUDGE PRIDGIN: I'll overrule. He can
18 answer, if he knows. If he doesn't know, he can say
19 so.

20 THE WITNESS: Mr. Powers had several
21 exhibits. I do not know off memory exactly what all of
22 them said. Could you refer me to the exhibit in which
23 that was expressed?

24 BY MS. HERNANDEZ:

25 **Q. Your stating you're not aware is fine.**

1 **Do you know if SERC has adopted WECC's**
2 **crit erion by reference?**

3 A. I'm not aware that they have.

4 **Q. Okay. Do you know if SERC has an**
5 **established protocol for adopting reliability criterion**
6 **approved by other regional entities like WECC?**

7 A. Each regional energy -- entity comes up
8 with their own criteria, all the way from auditing to
9 what they will and will not accept or agree with. So
10 I'm not aware that there was a blanket agreement given
11 or acceptance by SERC of WECC or -- or FC or MRO, or
12 any of the other regional entities.

13 **Q. Okay.**

14 A. Each one is rather independent, in all
15 honesty.

16 **Q. Would you agree that the regional**
17 **consistency reporting tool is a reporting protocol to**
18 **assure consistency among the regional entities like**
19 **SERC and WECC?**

20 A. I'm not familiar with their internal
21 processes of ERO members.

22 **Q. So you don't know what the regional**
23 **consistency reporting tool is?**

24 A. I do not know what -- if it's a tool
25 that's used between the EROs, I'm not aware of it.

1 **Q. Okay. You state in your surrebuttal**
2 **testimony at pages 33 and 34 that Ameren Services was**
3 **discussing possible installation of a voltage support**
4 **device, such as a static VAR compensator, to help**
5 **address the problem of NERC Category C events in**
6 **northeast Missouri that would result in low voltage; is**
7 **that correct?**

8 A. Can you show me the page and line
9 numbers, please?

10 **Q. Sure. It's on page 33, surrebuttal. It**
11 **would be, let's see -- it would be -- most of the**
12 **question and answer starts on line 8 -- line 8 all the**
13 **way through 33 and your answer continues to page 34,**
14 **line 10. To be more specific, your whole conversation**
15 **talks about options, but line 14 and 15 on page 33 talk**
16 **about the installation of voltage support devices.**

17 A. Okay. Could you restate the question,
18 please?

19 **Q. I was just asking you to acknowledge that**
20 **you -- that you discuss possible installation of a**
21 **voltage support device, such as the static VAR**
22 **compensator, to help address the problem of NERC**
23 **Category C events in northeast Missouri that would**
24 **result in low voltage.**

25 A. Well, the testimony says it's various

1 high-level solution options were discussed, which
2 included a new 345 kV line to supply Adair substation,
3 as well as possible installation of voltage support
4 devices such as static VAR compensators to help address
5 the problem.

6 **Q. And then would you agree that when MISO**
7 **approved the MVP portfolio, that Ameren Services no**
8 **longer -- no longer studied that alternative as a**
9 **possibility?**

10 A. That is correct. In 2011, the MISO board
11 of directors approved the MVP portfolio, which then put
12 in motion the construction of the Mark Twain project in
13 the MVPs. Subsequent to that, the Mark Twain project
14 is added to the MISO system model because we now have a
15 reason to believe that it will be built and we know
16 that Mark Twain will address these problems completely;
17 therefore, there was no reason to seek a solution to a
18 problem that already had a solution that had been
19 approved by the MISO board. In other words, we didn't
20 want to waste time solving something that already was
21 going to be solved with the Mark Twain project.

22 **Q. So is it your position -- or is it the**
23 **position of ATXI that if the MISO board of directors**
24 **approves a project in Missouri, that there should be no**
25 **other alternatives considered by ATXI?**

1 A. Well, when the MISO board approves a
2 project, they're an independent board. They do not
3 work for Ameren or anyone else, they're totally
4 independent, it puts in place, like I said, the motion
5 of getting a line built. The transmission owner who's
6 designated, in this case Ameren, has a responsibility
7 per the MISO tariff to try to construct that project.
8 We have an obligation to make a good faith effort to
9 construct.

10 If Ameren is unable due to financial
11 difficulty or other issues beyond their control, so to
12 speak, then someone else would be designated per the
13 MISO tariff to try to build it. And if they can't find
14 someone, then they'll go to external third parties, so
15 we had every confidence that the MVPs, because all
16 other transmission owners have this same obligation,
17 were going to be built and we had the same confidence
18 that the Mark Twain project was going to be built, so
19 at this point, we updated the model appropriately so
20 everyone would be planning the system from the year
21 2021 on with the Mark Twain and MVPs in service.

22 **Q. So let me make sure I understand your**
23 **answer. It's your position that once MISO approves a**
24 **project, that ATXI has no responsibility to consider**
25 **any other alternatives that may be less costly to**

1 **Missouri ratepayers?**

2 A. You're assuming that there will be an
3 alternative that is less costly. In this case, the
4 Mark Twain project is a multi-value project and cost
5 value has to enter the equation. In our transmission
6 planning criteria, we explicitly say we look for cost
7 as part of the inputs into selecting the best solution.

8 The Mark Twain project, in our opinion,
9 is the best solution for providing the full best set of
10 benefits of increased access to wind, access to lower
11 cost energy, support wind development in northeast
12 Missouri, and address the reliability issues identified
13 in northeast Missouri area. So we think it is the
14 lowest cost for the full solution set and the full
15 benefit set.

16 **Q. Okay. Does -- does ATXI have, in your**
17 **opinion, any responsibility to look at projects that**
18 **would have less environmental impact?**

19 A. Well, the environmental impact, I
20 believe, is part of the routing process, which Ameren
21 or any other transmission owner would go through in how
22 the line is actually routed. The MIS0 charge, so to
23 speak, from the board approval is basically a
24 connection points that we then have to build a line or
25 we have responsibility to try to build a line to

1 connect the dots, so to speak.

2 The environmental issues are captured in
3 the actual routing details where each transmission
4 owner, ATXI in this case, would incorporate
5 environmental issues, concerns, things of that nature,
6 limitations into the actual detailed routing.

7 **Q. On pages 40 and 41 of your surrebuttal**
8 **testimony, you state in your surrebuttal testimony that**
9 **the --**

10 A. Could you wait a second until I get
11 there?

12 **Q. Oh, I apologize.**

13 A. Okay. I'm there. Thank you.

14 **Q. You state that the --**

15 A. Which lines, please?

16 **Q. Sure. One moment. Lines 21 through 23**
17 **and continuing on to 41 there. You state that the Mark**
18 **Twain project is being located along an existing**
19 **natural gas pipeline to improve access for a variety of**
20 **different generation types; is that correct?**

21 A. Yes, that's correct.

22 MR. LOWERY: I guess I'm going to object
23 that it mischaracterizes what he said. He didn't say
24 it would be located along an existing gas pipeline.

25 JUDGE PRIDGIN: I'm going to overrule. I

1 mean, he can answer if that's what the question says or
2 not.

3 THE WITNESS: Well, the actual text of my
4 testimony says existing infrastructure such as
5 transmission, natural gas pipelines influenced the
6 selection of the zones, even though they were designed
7 -- the energy zones were primarily -- helped to address
8 renewable mandates, they improve access to a wide
9 variety of generation types.

10 And in the MISO process and in the MISO
11 documentation, it mentions that the -- the attempt was
12 to truly make these multi-value projects which could
13 support a wide variety of future scenarios, including
14 business as usual with low growth, business as usual
15 with historical growth patterns, carbon-constrained
16 future with carbon caps, and then an even more extreme
17 carbon future which is carbon caps plus renewable
18 portfolio standard from the federal's of 20 percent,
19 which is roughly equivalent to the Clean Power Plan.

20 And under each of those scenarios, the
21 MVPs were shown to become -- or provide the values to
22 the footprint as shown in the MISO documents. Which I
23 think were a minimum of 1.8 in Missouri in all
24 scenarios. So it wasn't -- the energy zone was not
25 located specifically adjacent to a natural gas

1 pipeline, but it was taken into consideration of where
2 the energy zones would be located, yes.

3 **Q. Thank you. So then the new power that**
4 **Mark Twain and other MVP portfolio projects may be**
5 **natural gas-fired power. Would you agree with that?**

6 A. The FERC tariff requires open access to
7 anyone who wishes to use the transmission system,
8 regardless of fuel type, so yes.

9 **Q. And I guess you would agree that the new**
10 **power carried on these lines could be exclusively**
11 **natural gas-fired power, not that the tariff prohibits**
12 **it -- or open access, but it could be all natural gas**
13 **that prescribes to that line?**

14 A. Well, you asked me two different
15 questions. One is subscribe to the line and one is
16 flow across the line. That's two different scenarios.
17 One being flow across the line is indiscriminate.
18 That's going to be based upon MISO market, pricing. In
19 other words, the generator with the lowest price will
20 generally get to use the system, unless they've paid
21 for access to get to the system, which would be network
22 resource. The other one you're talking -- you said was
23 I think access to the system? Could you repeat your
24 second question?

25 **Q. Oh, I'd have to -- I'd have to have the**

1 **court reporter do that. I think you answered -- well,**
2 **if you wouldn't mind reading it back?**

3 COURT REPORTER: "And I guess you would
4 agree that the new power carried on these lines
5 could be exclusively natural gas-fired power,
6 not that the tariff prohibits it -- or open
7 access, but it could be all natural gas that
8 prescribes to that line?"

9 THE WITNESS: The probability of it being
10 all natural gas-powered energy that flows across the
11 line is tremendously -- I'd say practically zero. The
12 person that would subscribe, in other words pay to get
13 access to the transmission line for network resources,
14 in other words having a ticket to ride, so to speak, to
15 get access to the freeway, they would have a right to
16 use in the same power across.

17 In other words, if you pay to use it, you
18 get to use it. If not, you just go with everyone else
19 and hope that you're the low price bidder, so to speak.
20 So if natural gas were to pay for access, then they
21 would get an access right the same as wind or any other
22 energy source.

23 BY MS. HERNANDEZ:

24 **Q. Do you consider Iowa a state with**
25 **stronger wind power resources generally than Missouri?**

1 A. I'm not a wind developer and I can't
2 really comment about that. That's not my area of
3 expertise.

4 **Q. Okay. Are you aware that Ameren Missouri**
5 **has one wind power contract with a wind farm in Iowa?**

6 A. I am not -- it could. I am aware that
7 Ameren Missouri just issued an RFP within the last week
8 or two with another up to 200 megawatts of wind energy,
9 but their existing contracts, I am not ware of.

10 **Q. Okay.**

11 A. Now, Ameren Missouri may choose to buy
12 part of the 400 megawatts that they've announced they
13 want to connect to the Mark Twain project that was just
14 announced a couple weeks ago that they want to
15 interconnect in northeast Missouri to Mark Twain in
16 Schuyler County for 400 megawatts.

17 **Q. All right. Thank you. I do have some**
18 **questions that will probably draw out some highly**
19 **confidential information, so I would request that we go**
20 **in-camera.**

21 JUDGE PRIDGIN: I will have to clear the
22 room.

23 MS. HERNANDEZ: I understand.

24 JUDGE PRIDGIN: Okay. We'll go
25 in-camera.

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(REPORTER'S NOTE: At this point, an
in-camera session was held, which is contained in
Volume 3, pages 184 to 191 of the transcript.)

1 JUDGE PRIDGIN: And questions from the
2 bench, Mr. Chairman.

3 THE WITNESS: Your Honor, if these
4 questions are going to be around highly confidentials,
5 like we just discussed, then it would be subject, I
6 think --

7 CHAIRMAN HALL: I don't think mine will
8 be.

9 THE WITNESS: Okay, I'm sorry. Thank
10 you.

11 EXAMINATION

12 QUESTIONS BY CHAIRMAN HALL:

13 Q. Good afternoon.

14 A. Good afternoon, sir.

15 Q. My understanding is that the in-service
16 date for this project is 2018; is that correct?

17 A. Correct.

18 Q. The target?

19 A. Correct.

20 Q. And in order to meet that goal, ATXI has
21 requested an Order from this Commission by January 31st
22 of '16?

23 A. I believe so, yes.

24 Q. I hate to break it to you, that's
25 unlikely.

1 A. Yes, sir, I know.

2 Q. So my question is: How important is
3 2018? If it's three months later, six months later,
4 what happens?

5 A. Meeting the in-service date of 2018 is
6 extremely important for several reasons. Number 1, for
7 the Missouri customers, every day that the Mark Twain
8 project is not in service after the 2018 date is
9 economic benefits and efficiency benefits that are lost
10 forever and are never recovered. Secondly --

11 Q. Let me stop you. What does that mean?

12 A. What that means is in witness Schatzki's
13 testimony, he has identified millions of dollars,
14 hundreds of millions of dollars of benefits each year
15 to Ameren Missouri customers from the Mark Twain
16 project being in service. If that's delayed, pro rata
17 portion of those benefits or savings, so to speak,
18 would be lost because you can't recover time.

19 Q. Meaning that -- how does that effect
20 actual ratepayers in Ameren's service territory?

21 A. I'm not a rate expert, and I'm not an
22 expert on Missouri's rates, so I can't specifically
23 address, you know, the rate calculations. But from an
24 energy standpoint, if the Mark Twain project provides
25 an access to the wind, like I just said additional 290

1 megawatts of flow, and if that wind is a cheaper market
2 price than you can buy without Mark Twain, you're
3 paying more than you should without Mark Twain in
4 service because you don't have access to the cheaper
5 power.

6 **Q. So Ameren Missouri would -- would need to**
7 **pay more for that -- for that power and at least in**
8 **theory pass that increase on to customers at some point**
9 **in time?**

10 A. It would be a market-based rate and it
11 would be a constraint that -- or some limitation that
12 the Mark Twain project would allow or eliminate and
13 would allow you to have additional lower-priced energy
14 access.

15 **Q. Did the MISO analysis, which resulted in**
16 **the identification of these 17 MVP projects, take the**
17 **Clean Power Plan into account or was that way before**
18 **the Clean Power Plan was on the horizon?**

19 A. Well, the Clean Power Plan was just
20 promulgated last year, so specifically that document
21 wasn't around. However, one of the goals of the MVP
22 process was to create a set of projects that
23 specifically we've determined and MISO determined to be
24 no regrets. In other words, these projects would
25 provide the indicated value and benefits to the

1 consumers in a very wide range set of possible future
2 scenarios.

3 And that's why -- remember I talked about
4 the four: Business as usual with recession-type load
5 growth, which is kind of what I think -- I'm not an
6 economist, but seems to be where we're at right now.
7 Business as usual was another case with historical load
8 growth. There's a business as usual with a carbon cap,
9 and then finally on the other end of the bookend was,
10 you know, no carbon constraints all the way to carbon
11 constraints. The far end of the bookend was also a
12 carbon constraint with a 20 percent federal renewable
13 portfolio standard and a carbon cap and high
14 penetration of electric vehicles.

15 That is the future that I believe the
16 Clean Power Plan is going to drive us to, in effect, so
17 it was maybe not called the Clean Power Plan when we
18 did the analysis; however, I think it's very similar to
19 what the future holds has been tested by this fourth
20 scenario that we looked at.

21 **Q. So if the -- if the rule is upheld by the**
22 **courts, it makes, from your perspective and from ATXI's**
23 **perspective, it makes this project even more valuable?**

24 A. Absolutely. It gives optionality, and
25 that's one of the keys you'll hear from the market

1 guys. It gives you optionality to have access to wind,
2 access to whatever may come about from the Clean Power
3 Plan. Ameren is -- Missouri is heavily coal, which I'm
4 sure you're very well aware of.

5 **Q. You mentioned that there was an RFP**
6 **recently sent out for -- I can't remember if you said**
7 **200 or 400.**

8 A. Ameren Missouri has recently issued an
9 RFP for between 100 and 200 --

10 **Q. I'm sorry, between what?**

11 A. One hundred and 200 megawatts of
12 renewable wind energy. And in that RFP, there is their
13 preference. First is an Ameren Missouri territory. I
14 believe second is in Missouri, I think third is in a
15 state adjacent to Missouri but in MISO, and fourth is
16 not adjacent but still in MISO.

17 **Q. And is the Adair wind zone, is that in**
18 **Ameren service territory, if you know?**

19 A. I do not know. I know we have an
20 existing -- we have power lines in that area, but I
21 don't know if it's Ameren Missouri service territory.

22 **Q. Okay.**

23 A. I should also state that MISO does have a
24 400-megawatt new connection request that was just
25 submitted a couple weeks ago for a 400-megawatt wind

1 farm that was -- already said they want to connect to
2 the Mark Twain project in Schuyler County.

3 **Q. On page 8 of your direct testimony, you**
4 **listed the three criteria for MVP project, and I just**
5 **want to make sure I understand, because something I**
6 **think a little different was stated earlier today. To**
7 **be classified as an MVP, it needs to meet just one of**
8 **those three; is that correct?**

9 A. Yes, sir, that is my understanding in a
10 MISO tariff. It has to meet one of these criteria;
11 however, being a multi-value project, effectively most
12 of them meet all three to some degree, but these were
13 -- the MVPs were approved based on criteria one.

14 **Q. So on page 11 where you identified the**
15 **two benefits, both of those benefits line up with**
16 **criterion one? Or am I doing apples and oranges?**

17 A. I'm just reading, sir, I'm sorry.

18 **Q. Okay.**

19 A. Let me refresh my memory. These are two
20 of the benefits that are provided, correct.

21 **Q. Two of the benefits under criterion one?**

22 A. Correct.

23 **Q. Okay. There are other benefits, but**
24 **these are two that I chose to list and yes, it could**
25 **have been longer.**

1 **Q. Because there's been some discussion**
2 **about benefits that it would at least appear to me that**
3 **would fit under criteria two and three?**

4 A. That's correct. And as I said earlier,
5 you know, the MVPs provide -- this set of MVPs
6 particularly provide a wide set of benefits, including
7 for Missouri, access to wind, access to lower cost
8 energy, development of wind power potential, and also
9 solving reliability project.

10 **Q. So then in terms of the cost benefit**
11 **analysis, how important is it that there's ultimately**
12 **wind development in the Adair wind zone?**

13 A. It's another benefit, but it's not, as my
14 supplemental data response indicated, it provides
15 access to at least an additional 290 megawatts of wind
16 power energy from upper Midwest accessing Ameren
17 Missouri. It also addresses the reliability issue. It
18 also provides access to lower cost energy and
19 renewables. So even if no wind is developed in the
20 wind zone, it still provides benefits which outweigh
21 the costs.

22 **Q. Okay. Thank you. I have no further**
23 **questions.**

24 A. Thank you.

25 JUDGE PRIDGIN: Commissioner Kenney?

1 COMMISSIONER KENNEY: No questions.

2 JUDGE PRIDGIN: Commissioner Rupp?

3 COMMISSIONER RUPP: No questions.

4 JUDGE PRIDGIN: Any recross based on
5 Commissioner questions? Staff?

6 MS. MYERS: No questions, Your Honor.

7 JUDGE PRIDGIN: Thank you. MISSO?

8 RECCROSS-EXAMINATION

9 QUESTIONS BY MR. SMALL:

10 **Q. Kramer, I think you were in the midst of**
11 **a list of consequences to not building the line by 2018**
12 **and you had covered the lack of benefits from every**
13 **year that the project was delayed. Did you have**
14 **further listing of difficulties for not completing the**
15 **line by 2018?**

16 A. Yes, there's additional severe
17 difficulties with missing the 2018 date. It's an
18 impact on the Ameren Missouri system. The MVPs were
19 studied extensively to determine the optimal sequencing
20 of those.

21 In other words, when you're building
22 projects like this, and I don't do the construction,
23 but I do do the planning and the security analysis, you
24 have to take lines in and out of service and you have
25 to connect to existing lines and existing substations.

1 When you do that, you're taking equipment
2 out of service. If the MVPs are in -- they're properly
3 sequenced, you don't cause problems when you're doing
4 this work. When an MVP isn't going to be sequenced
5 properly, what you have is the rest of the world moving
6 on. If Mark Twain is delayed. The rest of the world
7 is moving on. The Illinois Rivers is moving on, the
8 MVPs in Iowa, 15 of the 17 already have finished all
9 their regulatory requirements.

10 So they're going to be connecting wind
11 and bringing it to our borders, so to speak, and it's
12 going to cause problems on the Ameren Missouri system
13 as this wind tries to push on to our lower voltage 161
14 kV system. The difficulty it puts Ameren in is as
15 these additional lines are being built and as wind hits
16 our border and overloads our system, we have to take
17 what I would call stopgap measures.

18 In other words, we have to do something
19 to prevent the system from being overloaded because
20 that's part of the NERC criteria for reliability. So
21 we may, depending on the sequencing and the delays, we
22 may be forced to actually spend money to address a
23 reliability issue caused by the delay that would then
24 be -- it's called a reliability project and the Ameren
25 Missouri customers would end up paying for it.

1 In other words, a delay could cause a
2 reliability problem on our system as the rest of the
3 world moves out building and then we have to fix our
4 problem because our system can't keep up, so to speak.
5 That is -- that's one of the bigger problems.

6 The other problem is our impact also does
7 effect other states because the wind is going to get
8 stuck in Iowa and in northern portions of MISO and it's
9 going to cause them problems as well, so they're going
10 to have to make stopgap measures to take care of their
11 problems.

12 The sequencing is generally, if you look
13 at it, east to west for that very reason because we
14 wanted to make sure that we had an outlet for this wind
15 as -- before it got hooked up, so to speak. The -- the
16 concern is that if we don't keep it sequenced, we'll
17 have to go back and do a study, and that's when we'll
18 find out all these problems that we're causing. So
19 that's the kind of the full list. Thank you.

20 MR. SMALL: And Your Honor, if I may at
21 this time, I'd like to move -- we kind of moved on
22 quickly after my previous cross-examination. I'd like
23 to move Exhibit 52 into the record.

24 JUDGE PRIDGIN: All right. Any
25 objections? Hearing none, 52 is admitted.

1 (MISO Exhibit Number 52 is received into
2 evidence by Judge Pridgin.)

3 MR. SMALL: And with that, I have no
4 further questions, Your Honor.

5 JUDGE PRIDGIN: All right. Thank you.
6 United for Missouri?

7 MR. LINTON: No questions.

8 JUDGE PRIDGIN: Public Counsel?

9 MR. OPITZ: No questions, Your Honor.

10 JUDGE PRIDGIN: Neighbors United?

11 MS. HERNANDEZ: I also forgot to offer
12 Exhibit 53, so I'd like to do so at this time.

13 JUDGE PRIDGIN: Fifty-three is offered.
14 Any objections? Hearing none, it is admitted.

15 (NU Exhibit Number 53 is received into
16 evidence by Judge Pridgin.)

17 JUDGE PRIDGIN: Any questions,
18 Ms. Hernandez?

19 MS. HERNANDEZ: Oh, I'm sorry, no.

20 JUDGE PRIDGIN: Thank you, redirect?

21 MR. LOWERY: Yes, Your Honor, and I'm
22 going to try to do the non-highly confidential first,
23 but we may have to go back in-camera to deal with the
24 highly confidential. I think we probably will.

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REDIRECT EXAMINATION

QUESTIONS BY MR. LOWERY:

Q. Let me try to go in reverse order, Mr. Kramer, and ask you a few questions and follow-up on to Chairman Hall's questions.

I think this was clear, but I'm not a hundred percent sure that it was. There's three MVP criteria, and I think I misspoke this morning and said it has to meet all three to be an MVP and you've corrected me and indicated it only has to meet one, but in the case of the Mark Twain project, does it meet all three?

A. I think effectively, it does, yes.

Q. And that's because its benefits are greater than its costs and it's also addressing NERC issues; right?

A. If you read the three criteria, there's kind of an economic clause, which is number two, and there's a reliability clause, which is number three. And this particular MVP, Mark Twain, checks all the boxes, yes.

Q. In answering one of the Chairman's questions, you mentioned a new 400 megawatt wind project that had been placed in the MISO queue, I think you said a couple weeks ago?

1 A. Correct.

2 **Q. Do you know what county that's planned**
3 **for?**

4 A. It is in Schuyler County. Now, this is
5 information I'm providing now is directly from the MISO
6 generation interconnection queue, which is a
7 public-accessible document on their Web site. It's 400
8 megawatts wind. They say they want to have access for
9 400 megawatts winter and summer. It's at Schuyler.
10 It's connecting to the Mark Twain project, they
11 specified they want to connect to ATXI, and that would
12 be the Mark Twain project.

13 It can't really connect to the existing
14 161 because the I think limit of that particular line
15 of avenues to Adair is 233 MVA, so this is almost twice
16 as big as that line would carry. So for this wind farm
17 to move forward, it pretty much has to be on Mark
18 Twain.

19 **Q. And that wind farm is in the -- I think**
20 **the Chairman referred to it as the Adair wind zone**
21 **earlier?**

22 A. Yes, it's in the Adair wind zone;
23 correct.

24 **Q. Now, in answering some of the questions,**
25 **I think you mentioned this 290 megawatt figure. I**

1 **think Mr. Small was talking to you about earlier and**
2 **Chairman Hall asked you about earlier as well; correct?**

3 A. Correct.

4 **Q. Now, I think you said that's a minimum**
5 **that could come into Ameren Missouri's control area; is**
6 **that right?**

7 A. That is correct. That is the flow that
8 we determined would be the minimum that would be
9 available to come in.

10 **Q. And you're talking about wind from**
11 **outside Ameren Missouri; right?**

12 A. Correct. This analysis did not assume
13 any wind being generated in the Ameren -- the Missouri,
14 I guess C wind zone, which is in northeast Missouri.
15 This was all coming from outside the Missouri border.

16 **Q. Can you describe for the Commission when**
17 **you say Missouri C zone, can you describe for them**
18 **where that designation Missouri C comes from and what**
19 **that is?**

20 A. Well, the designation I believe is from
21 the MISO documentation and the MVP report which
22 identifies the blue jelly beans, so to speak, if you
23 look at the map. And shows where the wind and other
24 energy resource zones are that was selected by
25 stakeholders, including the state input. And it was

1 identified that these would be the areas that the MVPs
2 would attempt to traverse or connect to, which gave us
3 the rough routing of them.

4 **Q. Do you know, has MISO made a**
5 **determination about the amount of wind that could be**
6 **located in MO C, which I think is also the same thing**
7 **as the Adair wind zone that we're talking about, the**
8 **amount of wind that could be enabled by that zone by**
9 **this line?**

10 A. Yes, my recollection is the ultimate
11 build-out potential for wind is 1,347 megawatts of wind
12 development in that zone is what MISO determined could
13 be the potential build out, which is -- which helped
14 drive or is commensurate with the Mark Twain rating,
15 which is 1,793 MVA, so they wanted to make sure that
16 the 345 line, that's why we didn't go -- that's why 116
17 isn't really viable. You have to go with 345 kV line
18 to support that type of wind development.

19 **Q. So you could have a combination of**
20 **several hundred or a thousand or whatever megawatts in**
21 **the Adair zone, you could have other wind outside and**
22 **the line has the capacity to handle that?**

23 A. That is correct. The -- even if you put
24 400 megawatts on with this new development that was
25 announced in the MISO queue, you still have almost

1 1,400 MVA of capacity that's still available.

2 Q. Now, in some of the questions that
3 Ms. Hernandez asked you, she was asking you -- she was
4 asking you about gas generation and gas using the line
5 as opposed to other generation sources. Do you recall
6 that?

7 A. Yes, I do.

8 Q. I think what she was -- I think what she
9 was trying to ask you was: Would you expect that the
10 only generation to be enabled by the Mark Twain line,
11 would you expect that to all be gas or would you expect
12 it to be other sources of generation as well? And do
13 you have an opinion about that, an answer to that
14 question?

15 A. I'm not generation developer, so I'm not
16 an expert. That would be something Mr. Vosberg could,
17 but based on my experience, it would be, as I said
18 before, extremely unlikely, highly unlikely, that all
19 the generation that would be connecting and using the
20 Mark Twain project would ever be one particular fuel
21 type. In other words, I think it will be a mixture
22 with the vast majority being wind.

23 MR. LOWERY: Your Honor, let me look at
24 one thing and I'm going to try to finish any public
25 questions before I take us in. I believe, Your Honor,

1 that the rest of my questions will likely elicit highly
2 confidential information.

3 JUDGE PRIDGIN: All right. Thank you.
4 We'll go in-camera and then Mr. Lowery, will you have
5 anymore public redirect or is it all --

6 MR. LOWERY: I'm not intending to.

7 JUDGE PRIDGIN: Okay. Just to let the
8 folks know that need to leave after this we, will take
9 a break after this witness, so hopefully you can have
10 an extended break, you're not just running back and
11 forth. So we will ask for the room to be cleared,
12 unless you're supposed to be in the room for highly
13 confidential information. Thank you.

14 (REPORTER'S NOTE: At this point, an
15 in-camera session was held, which is contained in
16 Volume 3, pages 209 to 214 of the transcript.)

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1 JUDGE PRIDGIN: We're back on the record.
2 Correct me if I'm wrong, I believe Mr. Bailey was the
3 subject of discussion earlier. He's unable to be here
4 today and we're moving on to Mr. Silva.

5 MR. TRIPP: That's correct, Judge.

6 JUDGE PRIDGIN: Anything further before
7 he takes the stand?

8 MR. TRIPP: No, Your Honor.

9 JUDGE PRIDGIN: Okay. Michael Silva, if
10 you could come forward and be sworn, please.

11 (The witness was sworn by Judge Pridgin.)

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. TRIPP:

14 Q. Mr. Silva, would you please state your
15 full name?

16 A. James Michael Silva.

17 Q. Mr. Silva, by whom are you employed?

18 A. Enertech Consultants.

19 Q. And you're offering testimony on this
20 case on behalf of ATXI?

21 A. Yes.

22 Q. And are you the same J. Michael Silva
23 that caused to be prepared surrebuttal testimony of
24 J. Michael Silva?

25 A. Yes, I am.

1 Q. And that's marked as Exhibit 6?

2 A. Yes.

3 Q. Do you have any changes to that
4 surrebuttal testimony?

5 A. No.

6 Q. And if I asked you the same questions
7 that were asked of you in that testimony, would your
8 answers be the same today?

9 A. Yes, sir.

10 Q. And is that surrebuttal testimony given
11 to the best of your knowledge and belief?

12 A. Yes.

13 MR. TRIPP: Your Honor, at this time, I
14 move for admission of Exhibit 6 into the record and
15 tender the witness for cross-examination, subject to
16 this admission.

17 JUDGE PRIDGIN: Thank you. Any
18 objections? Hearing none, Exhibit 6 is admitted.

19 (ATXI Exhibit Number 6 was received into
20 evidence by Judge Pridgin.)

21 JUDGE PRIDGIN: Cross-examination, Staff?

22 MR. WESTEN: Your Honor. Thank you.
23 With your permission, mighty inquire from the table.

24 JUDGE PRIDGIN: Certainly.

25 ///

CROSS-EXAMINATION

QUESTIONS BY MR. WESTEN:

Q. Hi, Mr. Silva. My name is Jacob Westen. I am Staff Counsel and I have just a few quick questions for you, I think will help the parties understand a little bit of your testimony.

The first question I want to ask you is about the research that you identified that you conducted in your testimony, specifically you have a very short summary on page 11 of your testimony, lines 15 through 21.

A. Yes, sir.

Q. And it says that you've done two analyses, one is theoretical and one is a practical experiment, essentially; is that correct?

A. Yes, sir.

Q. And I wanted to know the time that you conducted this study. Did you conduct it in response to this particular case or had you already conducted these experiments prior to the ATXI case?

A. Well, my paper on this work was published in 2002.

Q. Okay. And you said these were conducted together as part of the same research projects, plural projects. Can you just briefly say what the project

1 **was that this research was conducted for?**

2 A. Yes. I was doing an assessment of the
3 use of GPS near electric power lines.

4 **Q. Okay.**

5 A. And evaluating was there any potential
6 for interference to GPS.

7 **Q. Okay. There wasn't any particular**
8 **project specifically that this research was conducted?**

9 A. No, sir.

10 **Q. Okay. Does the amount of kilovolts on a**
11 **line change the hertz cycles per second that is on that**
12 **line?**

13 A. No, sir.

14 **Q. Okay. And one last question for you from**
15 **your testimony. On page 4, lines 6 through 7, you have**
16 **the following sentence: In the United States,**
17 **transmission lines are generally classified in the**
18 **115-kilovolt to 765-kilovolt range, although some**
19 **companies may include 69-kilovolt lines as well.**

20 **I was curious as to where the**
21 **classification for transmission lines came from.**

22 A. The transmission line reference book,
23 commonly called the red book to engineers.

24 **Q. The red book?**

25 A. Yes.

1 **Q. You'll have to forgive me that I'm not**
2 **familiar with the red book.**

3 A. Okay. Well, it started life as a
4 reference book on transmission lines by Westinghouse in
5 the '40s and '50s. Subsequent to that, the General
6 Electric High Voltage Lab funded by the nations utility
7 did research to update the book, and in the '70s
8 produced a transmission line -- it's called the
9 transmission line reference book and it's red. It was
10 updated again in the '80s and most recently in 2005.

11 **Q. Okay.**

12 A. And in there, they have a discussion of
13 this and a graph showing the year of which of these
14 voltages was introduced in the United States.

15 **Q. Does -- is it fair to say that the -- the**
16 **definitions included in that book are industry**
17 **definitions or are they regulatory definitions?**

18 A. The definitions are generally accepted by
19 the Institute of Electrical and Electronics Engineers,
20 which is a professional organization.

21 **Q. Okay. Thank you.**

22 MR. WESTEN: I have no further questions.
23 Thank you.

24 JUDGE PRIDGIN: Thank you. MIS0?

25 MR. SMALL: No questions, Your Honor.

1 JUDGE PRIDGIN: Public Counsel?

2 MR. OPITZ: No questions, Your Honor.

3 JUDGE PRIDGIN: Thank you. Neighbors
4 United?

5 MS. HERNANDEZ: Thank you.

6 CROSS-EXAMINATION

7 QUESTIONS BY MS. HERNANDEZ:

8 Q. Hello. I do have a few questions. Your
9 surrebuttal, if you could turn to page 7 of your
10 surrebuttal, lines 21 through 22.

11 A. Yes.

12 Q. You state there a popular approach to
13 greatly improving accuracy is accomplished by a method
14 called real time kinematic, or RTK. Did I pronounce
15 that correctly?

16 A. You did.

17 Q. Okay. Great. That's what your testimony
18 states right there; correct?

19 A. I'm sorry, I didn't hear the question.

20 Q. Did I read that sentence correctly?

21 A. Yes.

22 Q. Okay. And you're talking about approving
23 the accuracy of GPS systems?

24 A. Yes.

25 Q. Okay. And on page 8, lines 3 through 11,

1 you go through a question and answer about how RTK
2 works. Your understanding is based on research that
3 you've conducted; is that correct?

4 A. Yes, and technical papers and books I've
5 read.

6 Q. Okay.

7 A. And manufacturers I've worked with.

8 Q. When you've evaluated these RTK systems,
9 have you looked at the -- the owners manual, I guess,
10 if you will, or set up guidelines that come with these
11 pieces of equipment?

12 A. I have seen a number of manufacturer's
13 owner's manuals.

14 Q. Okay. Are you familiar with Trimble?

15 A. Yes. Actually, Trimble has many, many
16 owners manuals.

17 Q. Okay.

18 MS. HERNANDEZ: I'm sorry, are we on 55?

19 JUDGE PRIDGIN: I show 54.

20 MS. HERNANDEZ: Okay. My apologies.

21 (NU Exhibit Number 54 was marked for
22 identification by the court reporter.)

23 MS. HERNANDEZ:

24 Q. If I could have you turn to page 37 of
25 this manual.

1 A. Yes.

2 Q. And the last bullet point on that page.

3 A. Yes.

4 Q. Would you agree that it reads: Do not
5 use the rover receiver directly beneath or close to
6 overhead power lines or electrical generation
7 facilities? The electromagnetic fields associated with
8 these utilities can interfere with GPS receiver
9 operation.

10 A. Yes, I've seen this before.

11 Q. Okay. And you were aware of this
12 statement when you prepared your testimony?

13 A. I was.

14 Q. Okay. Are you familiar with differential
15 global positioning systems?

16 A. I'm familiar with the term differential
17 GPS.

18 Q. Okay. Would you agree that it's -- and
19 I'll refer to that shortened DGPS, but DGPS is an
20 enhancement to global positioning system -- systems
21 that provides an improved location accuracy. Would you
22 agree with that?

23 A. That's what differential GPS does, yes.

24 Q. Okay. Would you agree that these DGPS
25 systems are often used in satellite-assisted steering

1 **systems and modern agricultural practices?**

2 A. No, I wouldn't agree with that. If you
3 mean the nationwide differential GPS system, it's not
4 anymore -- it doesn't provide the precision that
5 precision agriculture needs. And starting January 15th
6 of this year, the stations are being closed.

7 **Q. Okay. Do some -- I guess do some farmers**
8 **still have this technology that could be used?**

9 A. They might, but they would not be able to
10 achieve the accuracy that's needed for modern precision
11 agriculture. And after January 15th, they're not going
12 to be able to use them. Or starting this year, they're
13 closing 62 of the 84 systems down except for the Coast.

14 **Q. Except for the Coast. Okay.**

15 A. They've been surpassed by far superior
16 systems, as I mentioned in my testimony.

17 **Q. If you go to your Schedule JMS-SR1.**

18 A. Yes.

19 **Q. Let me see what page number it is.**

20 **Page 4 at the top, you mention that you've done a paper**
21 **called, The Study of the Potential for Electric Power**
22 **Facilities to Effect Use of the Global Positioning**
23 **System; is that correct?**

24 A. Yes.

25 **Q. Okay. And that paper was published in**

1 **Ion Publications; is that correct?**

2 A. It was provided with my work papers. It
3 was from the Institute of Electrical and Electronics
4 Engineers in 2002, in October of 2002.

5 Q. All right. Let me hand you 55.

6 (NU Exhibit Number 55 was marked for
7 identification by the court reporter.)

8 BY MS. HERNANDEZ:

9 Q. Have you had a chance to look over what's
10 been marked Exhibit 55?

11 A. Yes.

12 Q. And is this -- when it announces the
13 author there in the middle of the page, is this -- are
14 you the author that they're referencing?

15 A. Yes.

16 Q. Okay. Is it correct in this paper, you
17 state, "It should be expected that DGPS signals, in a
18 band just below AM radio band, could express similar
19 problems."

20 A. Do you have a copy of the paper?

21 Q. I have -- the paper was not -- I could
22 not find it publicly available online, but this is an
23 abstract of the paper.

24 A. Okay. Is it the abstract you gave me?

25 Q. Yes, this sheet.

1 A. Oh, okay. Where are you reading from
2 then?

3 **Q. The paragraph that's probably**
4 **three-quarters down, states abstract.**

5 A. Yes, oh, I'm with you now. I understand
6 what you're reading.

7 **Q. Would you agree that your paper talked**
8 **about these DGPS signals around power lines and since**
9 **these systems are in a band just below the AM radio**
10 **band, they could experience similar problems or**
11 **interference from electric power lines?**

12 A. Yes, this is the basis of why I did my
13 research. That was the thinking.

14 **Q. Okay.**

15 A. This is the system that's being closed
16 down that I was explaining to you earlier.

17 **Q. Okay. But you state that, let's see,**
18 **that would be I guess three sentences after it, you**
19 **state some agricultural users have reported that power**
20 **line noise can be a problem for these receivers under**
21 **certain conditions.**

22 A. Yes, I've heard that from people from
23 time to time. I've also heard that it's not. That's
24 why I did my research.

25 MS. HERNANDEZ: I don't have any further

1 questions, but I would ask for Exhibit 54 and 55 to be
2 admitted at this time.

3 JUDGE PRIDGIN: All right. Fifty-four
4 and 55 are offered. Any objections? Hearing none, 54
5 and 55 are admitted.

6 (NU Exhibit Numbers 54 and 55 were
7 received into evidence by Judge Pridgin.)

8 JUDGE PRIDGIN: Any bench questions,
9 Mr. Chairman?

10 CHAIRMAN HALL: No questions. Thank you
11 for your testimony.

12 JUDGE PRIDGIN: Commissioner Kenney?

13 COMMISSIONER KENNEY: No questions.
14 Thank you, sir.

15 JUDGE PRIDGIN: Any redirect?

16 MR. TRIPP: Yes, Your Honor, just
17 briefly.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MR. TRIPP:

20 **Q. Going to Exhibit 54 that you were asked**
21 **some questions about, Mr. Silva, do you have that there**
22 **in front of you?**

23 A. Is that the first thing I was handed?

24 **Q. Yeah, it's the Chapter 4.**

25 A. Yeah, one of the Trimble manuals, yes.

1 **Q. Right, the Trimble manual. Now, you were**
2 **asked whether you were aware of this statement when you**
3 **prepared your testimony and the statement was actually**
4 **on page -- what's marked as 37 of Exhibit 54. Do you**
5 **see that?**

6 A. Yes.

7 **Q. Does this contradict your testimony?**

8 A. No.

9 **Q. Why not?**

10 A. Well, you can find other Trimble manuals
11 that say power lines are usually not a problem. And in
12 particular, I know the people at Trimble and the -- one
13 of the people that helped me do my research is a guy
14 that developed the light bar for Trimble, and I've
15 lectured at Trimble and Trimble people have worked with
16 me, and I know them quite well, and I sort of
17 confronted them about this. Why do some of your
18 manuals have this warning about power lines and other
19 stuff when you know well based on my work -- and they
20 went out with me when I did some of these measurements.
21 They provided the equipment and the software to do the
22 work. And the engineer said, well, out of an abundance
23 of caution, our lawyers won't let us take that
24 statement out.

25 So my answer is that the GPS companies

1 designed the good ones, designed products to function
2 in the environments for which they're intended to be
3 used. And if you're dividing a GPS system that is
4 going to be used, for example, agricultural setting,
5 power lines are one of the things that you can find in
6 agricultural environments.

7 I have taken Trimble engineers to power
8 lines so they can test their equipment and satisfy
9 themselves, and they have put in the necessary
10 shielding and other equipment so that -- but
11 nevertheless, you can still find -- I can produce a
12 manual if I had known that this was going to be shown
13 to me that says the opposite, and the same company.

14 **Q. Is your testimony today that there would**
15 **not be any interference between agricultural precision**
16 **GPS and the Mark Twain transmission line?**

17 A. Yes.

18 **Q. Now, if you'll turn to Exhibit 55, that**
19 **abstract of that -- that research that you performed?**

20 A. Yes.

21 **Q. Do you have that? And I think you said**
22 **earlier this has to do with the system that's being**
23 **shut down. Who's mandating the shutdown or who's**
24 **shutting it down?**

25 A. It's an obsolete system. It's being

1 mandated by the Department of Transportation and the US
2 Coast Guard who built the system, and it was
3 immediately used by the farming -- it started as a
4 marine navigation system and it was so popular farmers
5 on the Coast started using it and it expanded, mainly
6 because they were going to use it in something called
7 positive train control all over the United States.

8 It's accuracy, though, you might get five
9 meters, ten meters, you know, five to 30 feet. That is
10 nowhere close. Farmers nowadays want to get within an
11 inch. So they go to -- compaction in their fields,
12 they go down the same track.

13 So it's been known for some time the
14 system is obsolete. The FAA has come out with a system
15 I've talked about in my paper where the signals now
16 come from microwave, signals from satellites in space,
17 so this system is being shut down and it's in the
18 federal register that effective January 15th,
19 everything but the coastal stations are going to be
20 closed.

21 **Q. Does this study that's represented by the**
22 **abstract that's Exhibit 55 have any relevance to your**
23 **testimony that you've provided in this case regarding**
24 **the agricultural precision GPS systems and the power**
25 **line in this project?**

1 A. No.

2 Q. **All right.**

3 MR. TRIPP: No other questions, Your
4 Honor.

5 JUDGE PRIDGIN: Mr. Tripp, thank you.

6 Mr. Silva, you may step down.

7 And moving on to Mr. Brown, I assume?

8 MR. FITZHENRY: That's correct, sir.

9 (The witness was sworn by Judge Pridgin.)

10 JUDGE PRIDGIN: Counsel, when you're
11 ready.

12 MR. ROSENCRANTS: Jeff Rosencrants for
13 ATXI.

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. ROSENCRANTS:

16 Q. **Can you state your full name for the**
17 **record?**

18 A. My name is Douglas J. Brown.

19 Q. **And who are you testifying for today?**

20 A. ATXI.

21 Q. **Mr. Brown, are you the same Douglas J.**
22 **Brown who filed direct testimony in Case Number**
23 **EA-2015-0146 consisting of eight pages and one schedule**
24 **and marked as Exhibit 7?**

25 A. Yes, I am.

1 **Q. And are you also the same Douglas J.**
2 **Brown who filed surrebuttal in Case Number EA-2015-0146**
3 **consisting of 20 pages and three schedules marked as**
4 **Exhibit 8?**

5 A. Yes, I am.

6 **Q. Do you have any corrections to the direct**
7 **or surrebuttal testimony that you filed in this matter,**
8 **sir?**

9 A. I have no corrections to my testimony.
10 Although I would note that after my surrebuttal
11 testimony, that ATXI and Staff reached an agreement on
12 certain conditions, and those conditions are outlined
13 in the ATXI's position statement.

14 **Q. Are the answers contained in your direct**
15 **and surrebuttal statement still true and correct?**

16 A. Yes, they are.

17 **Q. If I were to ask you those questions**
18 **today, would your answers be the same, sir?**

19 A. Yes, they would.

20 MR. ROSENCRANTS: Your Honor, at this
21 time, ATXI would move for admission of the direct and
22 surrebuttal testimony of Douglas J. Brown and the
23 schedules attached thereto marked as Exhibit 7 and
24 Exhibit 8 and would tender him for cross-examination.

25 JUDGE PRIDGIN: Mr. Rosencrants, thank

1 you. Any objections? Hearing none, Exhibits 7 and 8
2 are admitted.

3 (ATXI Exhibit Numbers 7 and 8 were
4 received into evidence by Judge Pridgin.)

5 JUDGE PRIDGIN: Cross-examination, Staff?

6 MR. WILLIAMS: Thank you. Judge, may I
7 approach? I have a couple of exhibits.

8 JUDGE PRIDGIN: Yes, you may. And these
9 have already been premarked as Exhibits Number 31 and
10 --

11 MR. OPITZ: 33 and 34.

12 MR. WILLIAMS: 33 and 34.

13 JUDGE PRIDGIN: Okay. Thank you,
14 Mr. Williams.

15 CROSS-EXAMINATION

16 QUESTIONS BY MR. WILLIAMS:

17 **Q. Mr. Brown, I've handed you two exhibits,**
18 **one of which has been marked for identification as**
19 **Exhibit Number 33, which is -- or purports to be Ameren**
20 **Transmission Company of Illinois's response to Staff**
21 **Data Request Number 69. Do you recognize that exhibit?**

22 A. I do.

23 **Q. And what is it?**

24 A. It's a response to a question that
25 proposed rebuttal testimony from Mr. Beck. It's a

1 condition talking about ATXI's process that's agreed by
2 with Staff talking about how we'll -- how we will
3 negotiate with the property owners if there's a
4 deviation off of the existing line route.

5 **Q. So is it ATXI's response to a Staff**
6 **inquiry as to what ATXI would propose in lieu of what**
7 **Staff had proposed in rebuttal testimony for a**
8 **particular condition?**

9 A. That's correct.

10 **Q. And did you prepare that response?**

11 A. I did.

12 **Q. And is that a true and accurate copy of**
13 **the Ameren Transmission Company's response to that**
14 **particular data request?**

15 A. Yes, it is.

16 MR. WILLIAMS: Judge, at this time, I'd
17 like to offer Exhibit 33.

18 JUDGE PRIDGIN: Thirty-three is offered.
19 Any objections? Hearing none, 33 is admitted.

20 (Staff Exhibit Number 33 was received
21 into evidence by Judge Pridgin.)

22 BY MR. WILLIAMS:

23 **Q. And then turning to what's been marked**
24 **for identification as Exhibit Number 34, which is --**
25 **purports to be a respond of Ameren Transmission Company**

1 of Illinois to Staff Data Request 70. Do you recognize
2 that response?

3 A. I do.

4 Q. Did you prepare it?

5 A. I did.

6 Q. And is it also a response to a different
7 condition that Staff proposed in rebuttal testimony?

8 A. That is correct.

9 Q. And is that -- let me put it this way --
10 a proposal that's acceptable to ATXI for how to resolve
11 that particular condition?

12 A. It is.

13 Q. And is that Exhibit 34 a true and
14 accurate, complete response?

15 A. Yes, it is.

16 MR. WILLIAMS: Judge, at this point, I'd
17 also like to offer Exhibit 34.

18 JUDGE PRIDGIN: Thirty-four's been
19 offered. Any objections? Hearing none, 34 is
20 admitted.

21 (Staff Exhibit Number 34 was received
22 into evidence by Judge Pridgin.)

23 MR. WILLIAMS: At this point, I have
24 concluded my cross-examination.

25 JUDGE PRIDGIN: Mr. Williams, thank you.

1 Mr. Small?

2 MR. SMALL: No questions, Your Honor.

3 JUDGE PRIDGIN: Thank you. United for
4 Missouri?

5 MR. LINTON: No questions.

6 JUDGE PRIDGIN: Public Counsel?

7 MR. OPITZ: No questions, Your Honor.

8 JUDGE PRIDGIN: Thank you. Neighbors
9 United?

10 MS. HERNANDEZ: Yes, a few questions,
11 thank you.

12 JUDGE PRIDGIN: When you're ready.

13 CROSS-EXAMINATION

14 QUESTIONS BY MS. HERNANDEZ:

15 Q. Mr. Brown, on page 4 of your direct
16 testimony --

17 A. I am on page 4.

18 Q. Okay. Lines 15 through 18, let's see,
19 the sentence that starts in that line, as explained by
20 Mr. Endorf, however during the installation of wires,
21 the installation contractor may have a need to set up
22 equipment outside the permanent easements ATXI obtains
23 for the transmission line, depending on where this
24 might occur, there may be a need to obtain temporary
25 construction easements. Did I read that correctly?

1 A. Yes, you did.

2 **Q. And would you agree that during that**
3 **construction time, the landowner could not farm or**
4 **ranch that piece of property where you have the**
5 **construction easement?**

6 A. Can you repeat the question, please?

7 **Q. Would you agree that during the time --**
8 **if I could read the same question again, but would you**
9 **agree that during the construction when you have**
10 **equipment on the property doing your construction and**
11 **you're in that temporary construction easement, would**
12 **you agree that the farmer would not be able to grow a**
13 **crop or a rancher would not be able to graze his or her**
14 **cattle in that area during that time that you're doing**
15 **construction?**

16 A. I would agree with that statement.

17 **Q. Okay. If I could have you turn to your**
18 **surrebuttal testimony now. Page 4.**

19 A. I am on page 4.

20 **Q. Lines 8 -- 8 and 9. The sentence that**
21 **begins on eight, the existence of the transmission line**
22 **should not effect their ability to farm or their yield**
23 **for that matter. Did I read your testimony correct**
24 **there?**

25 MR. ROSENCRANTS: Where are you at again,

1 Counsel ?

2 MS. HERNANDEZ: My copy, page 4, lines 8
3 and 9, the sentence that starts the existence of.

4 THE WITNESS: You read that sentence
5 correctly.

6 BY MS. HERNANDEZ:

7 Q. Okay. Would you agree that there's a
8 difference between "should not" and "will not?"

9 A. Should not --

10 Q. Should not and will not effect their
11 ability?

12 A. Yeah, there is a difference.

13 Q. Okay. Turn to page 6 of your surrebuttal
14 testimony.

15 A. I'm on page 6.

16 Q. Lines 3 through 5, the sentence there
17 begins with, is necessary for construction, ATXI will
18 reimburse landowner for their time required to move
19 livestock from one location to another. In the past,
20 we have also installed temporary fences or gates to
21 keep livestock out of construction area. Did I read
22 that correctly?

23 A. Yes, you did.

24 Q. If livestock need to be moved out of the
25 area, will ATXI pay for additional grazing land?

1 A. That's something that my opinion we would
2 meet with the landowner and during the voluntary
3 negotiation phase of the project, that was something we
4 would consider, yes.

5 **Q. But I guess I asked, would you pay for**
6 **it. I think that's a yes, no, or I don't know**
7 **question.**

8 A. Can you give me -- can you give me some
9 more details about that situation again?

10 **Q. Well, I'm asking you if the landowner has**
11 **to move their cattle and they have to rent another**
12 **piece of property to graze their cattle while you're**
13 **doing your construction, will you, will you not, or you**
14 **don't know whether you will pay for that particular**
15 **expense?**

16 A. That seems reasonable, and again, we
17 would consider it.

18 **Q. Would consider it, but you don't know for**
19 **sure if you would pay for that?**

20 A. Where I sit today, I don't know if we
21 would pay for it.

22 **Q. Okay. Page 6 again. Lines 8 through 10,**
23 **you talk about some photographs that you attached to**
24 **your testimony showing farming activities around**
25 **transmission lines. Did you speak to anyone to**

1 **determine your opinion on how farming activities can**
2 **occur around these transmission lines?**

3 A. As it relates to those photos, I did not.

4 Q. **Okay. So let me just clarify that**
5 **question. You didn't speak to anyone who owns property**
6 **around those transmission lines that you included in**
7 **your testimony to see whether they would state that**
8 **there were farming impacts?**

9 A. Those specific photos, I did not talk to
10 those property owners.

11 Q. **Okay. Thank you. If you could turn to**
12 **page 9 of your surrebuttal, please.**

13 A. I am on page 9.

14 Q. **Lines 11 through 15, you talk about**
15 **center pivot irrigation, and when ATXI's transmission**
16 **line is constructed, about compensation offers for --**
17 **for irrigation application. Did I summarize your**
18 **testimony correctly?**

19 A. Can you read that back to me, please?

20 Q. **Well, you're -- on lines 11 through 15,**
21 **you're talking about center pivot irrigation and once**
22 **ATXI's transmission line is there, if there's a**
23 **conflict in the field for continuing that type of**
24 **irrigation, you state that if the issue cannot be**
25 **resolved, that it would be an issue that you say will**

1 **be factored into the easement compensation offer. Did**
2 **I summarize your testimony correctly there?**

3 A. Yes.

4 **Q. Can you tell me with any certainty**
5 **whether ATXI will pay for, will not pay for, or you**
6 **don't know if ATXI will pay for a change in irrigation**
7 **systems if the transmission line makes the application**
8 **that is existing on that property today non-workable?**

9 A. If I go back to line 11, if after the
10 engineering review and mitigation efforts that we can't
11 get it resolved, ATXI would consider paying for the
12 changes to that irrigation system.

13 **Q. But you say -- you say that they'll**
14 **consider it. You can't sit here today and say you will**
15 **pay for it for certain?**

16 A. As I sit here today, I can't say that for
17 sure.

18 **Q. If you could turn to page 10 of your**
19 **testimony.**

20 A. I am on page 10.

21 **Q. The first Q and A on that page is a**
22 **question to you asking you to respond to Mr. Kruse and**
23 **Noel Palmer regarding aerial spray; is that correct?**

24 A. That's correct, that's the question.

25 **Q. And you state, if there's a presence --**

1 on line 15, if the presence of the transmission line on
2 this project impacts the use of aerial application, and
3 if this impact has an effect on the market value of the
4 property, then this impact will be reflected in the
5 easement compensation offer.

6 Can you tell me as you -- I think as
7 you've been saying, as you sit here today, whether
8 ATXI will pay for a change in any application method if
9 the transmission line makes the application that's in
10 use on the property now non-workable?

11 A. I think we would go through a lot of
12 efforts talking about -- talking back with our
13 engineering folks about the line design. We would also
14 maybe employ an expert to determine the details and
15 around the -- how the aerial application would be
16 changed to determine about a value and how that -- that
17 may change the value of the property.

18 Q. But again, as you sit here, you have no
19 certainty as to whether ATXI would pay for that change
20 in application?

21 A. As I sit here today without more details
22 about an example, I would say I can't say that we
23 would.

24 Q. Okay. Page 18, if you could turn to
25 page 18 of your surrebuttal, please.

1 A. I am on page 18.

2 **Q. Lines 19 through 22. That sentence that**
3 **starts on line 19, representatives from my department**
4 **have already responded to several inquiries from**
5 **landowners who have expressed interest in working with**
6 **ATXI on the easement agreement required for the**
7 **project. Did I read that correctly?**

8 A. Yes, you did.

9 **Q. Okay. And I believe -- yes, you're the**
10 **witness who talks about in your direct testimony the**
11 **number of parcels that would be effected or the**
12 **transmission line will cross; is that correct?**

13 A. That is correct.

14 **Q. Okay. And if I did the math correctly,**
15 **which I'm hoping I did, 378 parcels is what you have in**
16 **your direct testimony.**

17 A. Do you know what page that is on in my
18 direct?

19 **Q. I think you would have to add the parcels**
20 **you talk about on page 7, line 18; page 8, line 7;**
21 **page 6, line 23 -- line 22 for the parcels on page 6.**
22 **So it looks like 224 parcels plus 12 parcels plus 142.**

23 A. That is correct.

24 **Q. And that's 378 parcels and your testimony**
25 **states that's 283 landowners; is that correct?**

1 A. I did not do that math, but...

2 Q. The landowner numbers are right in the
3 lines where the parcels effected, where those numbers
4 are. So if you want to do the math to check me.

5 A. Two hundred thirty-eight property owners.

6 Q. I can do math today. That's wonderful.
7 So 283 landowners you identified across this -- where
8 the transmission line will cross. And in your
9 testimony on page 18, you state that you received
10 several inquiries from landowners thus far who have
11 expressed an interest; is that correct?

12 A. That is correct.

13 Q. And would you agree that your response to
14 data request submitted to you from -- by Neighbors
15 United stated that the number of the several inquiries
16 that you have received was a total of five?

17 A. Can you show me that data request?

18 Q. I'm not seeing that I have that here.
19 Are you saying that that's not your response, or you
20 just don't recall?

21 A. I don't recall. I wanted to confirm.

22 Q. Do you have any idea sitting here how
23 much the several inquiries was, if you dispute the
24 five?

25 A. I don't recall.

1 **Q. So you don't recall what several is, but**
2 **you cited several?**

3 MR. ROSENCRANTS: I'm going to object.
4 It's been asked and answered.

5 JUDGE PRIDGIN: I'll sustain.
6 BY MS. HERNANDEZ:

7 **Q. Would you agree that you make planning**
8 **decisions in your job every day?**

9 A. Planning decisions for real estate, I do,
10 yes.

11 **Q. Would you agree that some of these**
12 **planning decisions that you make are time sensitive?**

13 A. I would agree with that.

14 **Q. Okay. Would you agree that farmers make**
15 **planning decisions every day?**

16 A. I would agree.

17 **Q. And would you agree that some of their**
18 **decisions are also time sensitive?**

19 A. Yes, I would agree.

20 **Q. Do you know the time frame -- can you**
21 **state a time frame from the time if the Commission**
22 **approves the application to the time that you seek an**
23 **easement and build on the landowner's property, what**
24 **time frame that would be from -- from today?**

25 MR. ROSENCRANTS: I'm going to object.

1 That calls for speculation. He's not qualified to
2 render an opinion as to construction.

3 JUDGE PRIDGIN: I'll overrule it. He can
4 answer, if he knows, and if he doesn't know, he can say
5 so.

6 MS. HERNANDEZ: I guess maybe I'll offer
7 some clarification.

8 BY MS. HERNANDEZ:

9 Q. You stated that some of your planning
10 decisions are -- you make planning decisions in your
11 job; correct?

12 A. Yes.

13 Q. And that was your testimony? And some of
14 those are time sensitive, and you agree that farmers
15 make those same decisions and some of those are time
16 sensitive?

17 A. I would agree.

18 Q. Is there a potential for impact -- if you
19 would need to change the routing of the project on any
20 individual's parcel as you're building the line, and
21 you altered that line from what you had been shown to
22 them on the plat maps, is there a potential, in your
23 opinion, for an effect on any planning or -- any
24 planning decisions that they've made with that property
25 outside of that original right-of-way?

1 A. We would negotiate with the property
2 owner and meet with them several times to discuss if we
3 did want to move off of the original line route so they
4 would know as soon as we believe we wanted to relocate
5 the line on their property, so that would give, you
6 know -- that would give them notice and we would spend
7 a series of meetings with the property owners, if
8 indeed we did want to locate off of the original route.

9 **Q. Okay. I understand that answer.**

10 A. Okay.

11 **Q. If you -- if a farmer makes a decision**
12 **today and they build outside the right-of-way that**
13 **you've shown them on that parcel map, is there -- in**
14 **your opinion, is there potential to impact an**
15 **investment that they've made outside of that**
16 **right-of-way that you've already shown is where you**
17 **will build across their land?**

18 A. Please clarify, when you say build a new
19 route.

20 **Q. Put a pole, run a transmission line**
21 **across there.**

22 A. Oh, yeah, please restate the question. I
23 thought you said they were going to build on the
24 property. Sorry.

25 **Q. Right. I'm sorry, maybe I'm just not**

1 **stating the question very clearly.**

2 **Farmers make decisions every day about**
3 **what to do with their land. I think we agreed on that.**

4 **A. Yes.**

5 **Q. You've shown the individuals, the**
6 **landowners on those plat maps where you intend to -- to**
7 **run the right-of-way and run the transmission line**
8 **across their property; correct?**

9 **A. That's correct.**

10 **Q. Okay. In the conditions that you've**
11 **agreed to with Staff, you've come to an agreement that**
12 **you can move that -- that right-of-way with landowner,**
13 **I guess, negotiations but not come in and seek the**
14 **Commission approval to move that line; is that correct?**

15 **A. Correct.**

16 **Q. But the landowner may need to make a**
17 **decision today about what they want to do with their**
18 **property, say, build a barn, and now the line could**
19 **potentially have a pole where that barn is placed or**
20 **any other structure for that matter, or an investment**
21 **in crops, or whatever the investment may be.**

22 **A. In my opinion, if it was a barn, we would**
23 **look to relocate the line somewhere else if we couldn't**
24 **live with it on the same path that we showed the**
25 **property owner originally or it was at the public**

1 workshop. If we moved it off of the original route and
2 there was crops, we would compensate the landowners for
3 that crop loss.

4 MS. HERNANDEZ: That's all the questions
5 I have. Thank you for your time.

6 JUDGE PRIDGIN: Mr. Hernandez, thank you.
7 Questions from the bench?

8 CHAIRMAN HALL: Yes.

9 EXAMINATION

10 QUESTIONS BY CHAIRMAN HALL:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. **So my understanding is that you will need**
14 **to get easements if the project is -- if the -- if the**
15 **certificate is approved, you will need to get easements**
16 **from 283 landowners covering 372 parcels; is that**
17 **correct?**

18 A. I know it was -- excuse me -- it was 283
19 landowners. I believe it was 378 parcels.

20 Q. **Okay.**

21 A. I believe.

22 Q. **And as of right now, you had contact with**
23 **a few landowners, and you don't know the exact number,**
24 **but it's a relatively small number?**

25 A. That's correct.

1 **Q. And those contacts were initiated by the**
2 **landowners themselves?**

3 A. That is correct.

4 **Q. Because it is -- you don't attempt to --**
5 **attempt to negotiate any easements until after there's**
6 **a certificate granted in this case?**

7 A. That is correct.

8 **Q. And is that your typical practice?**

9 A. I've only dealt with two others and we
10 did two other similarly needing a certificate, and we
11 did wait until we got a certificate from the Staff
12 before we moved forward with negotiating with the
13 property owners.

14 **Q. What is the -- when you are determining a**
15 **price to offer a landowner, you are basing it on the**
16 **150-foot width of the easement, not the much smaller**
17 **portion of land that will be out of production; is that**
18 **correct?**

19 A. That is correct.

20 **Q. And so when you negotiate that easement**
21 **for that 150-foot strip, and then I guess there's also**
22 **a 100-foot strip for the 2.2 miles, but when you're**
23 **negotiating for that strip of land, is there -- what is**
24 **the -- what is your practice as to how you come up with**
25 **a price?**

1 A. We would begin the process by employing a
2 third-party independent licensed appraiser to give us
3 market data studies of land values across each of the
4 five counties. We would look at that. The appraiser
5 would look at some yields, would look at how the --
6 some value, some recent comparables in the county, what
7 land recently sold for, and would give us -- give us
8 some data that would give us an idea about different
9 land types and what those values should be.

10 **Q. So are you trying to determine the fair**
11 **market value in fee simple for that piece of property**
12 **or are you trying to determine the reduction in the**
13 **fair market value of the entire property?**

14 A. I think in fee simple is a good example.
15 We want to know what the fee simple is of that property
16 per acre and that would -- recent comparable sales
17 would help us determine what that -- what that dollar
18 amount would be per acre.

19 **Q. So your -- because the statute, I**
20 **believe, requires -- if you were to attempt to condemn**
21 **the property, the statute would require you to pay an**
22 **amount equivalent to the fair market value of such --**
23 **of such property. So is that what you're trying to do**
24 **or are you -- or are you going above and beyond what**
25 **the statute would require in your negotiations?**

1 A. In my opinion, we go above and beyond
2 what the statute requires. We would -- if we did move
3 to condemnation on a particular parcel, we would ask
4 that appraiser to give us a full appraisal report, kind
5 of like what you described earlier, a before and after
6 value of that property, what's the value of the
7 property before Ameren's transmission line -- ATXI's
8 transmission line and what's the value after ATXI's
9 transmission line has been installed.

10 **Q. And -- and so that would be a one-time**
11 **lump sum payment?**

12 A. That is correct.

13 **Q. Do you ever negotiate monthly payments?**

14 A. We do not.

15 **Q. It's not unusual in the industry to do**
16 **that, though, is it? Or is it much more common to do a**
17 **lump sum?**

18 A. Much more common -- my opinion, much more
19 common to do a lump sum, one-time payment.

20 **Q. And then there could be incidentals on**
21 **the side in terms of expenses to the landowner on top**
22 **of the change in value to the property, such as one of**
23 **the questions you had was if there -- if the landowner**
24 **had to -- to graze livestock and there were costs**
25 **associated with grazing it elsewhere, you would**

1 **consider including that on top of the change in the**
2 **fair market value?**

3 A. That is correct. Another component of
4 the compensation would be crop loss. So what is -- if
5 you lost crop in that easement strip, we would pay you
6 for the crop loss during the construction phase if it
7 impacted your yields.

8 A third component would be compaction.
9 So if we're going to bring equipment out onto the
10 property, if there's compaction, based on installing
11 the structures and also pulling the wire, we would pay
12 for -- either compensate the property owner for the
13 compaction or have a restoration contractor bring back
14 to where the yields -- where they're used to having the
15 yields.

16 **Q. Okay. Thank you.**

17 CHAIRMAN HALL: I have no further
18 questions.

19 JUDGE PRIDGIN: Commissioner Kenney?

20 COMMISSIONER KENNEY: Thank you.

21 EXAMINATION

22 QUESTIONS BY COMMISSIONER KENNEY:

23 **Q. I just wanted to follow-up on the**
24 **Chairman's questions and also counsel for Neighbors**
25 **United. Of these 378 parcels, how many parcels would**

1 **get away from the rural area into more of a**
2 **country/city structure, what you might call even a**
3 **small suburban -- not suburban, but --**

4 A. I don't have an exact number, but there
5 --

6 Q. Give me an estimate, a guesstimate.
7 Okay. How many acres? Of the -- or how many miles of
8 the 95 and the 2.2, how many miles is that 97.2 miles?

9 A. If I had to guess on the mileage, I would
10 say, you're talking about more of a subdivision setting
11 where --

12 Q. Yeah.

13 A. -- people live? I would say best guess
14 would be 20 miles.

15 Q. You also mentioned to Chairman Hall that
16 you do not anticipate any situations where you would
17 pay on an annual basis?

18 A. That's correct.

19 Q. What about the situations brought up by
20 counsel on the aerial application where it's more
21 expensive for a farmer to apply a different type of
22 chemical treatment to their crops because they can't do
23 an aerial application?

24 A. I think that's a good issue that would be
25 brought up during the voluntary negotiation phase of

1 the property project, and we would work with the
2 property owner to determine if it is a difference. If
3 it's reasonable, we would be able to bring that into
4 the compensation.

5 **Q. Even though it's an annual effect?**

6 A. That would all be part of the
7 negotiations with the farmer.

8 **Q. Okay. And I was surprised that you could**
9 **not say that on an irrigation situation, that**
10 **ATXI would not -- not make sure that situation was**
11 **taken care of.**

12 A. Well, I think I wanted a little bit more
13 details about the situation.

14 **Q. Okay. A center pivot, runs in a circle,**
15 **and you've got a big tower right in the middle of it**
16 **now. So that center pivot, you could maybe divert it,**
17 **but if you had two poles in that area, you couldn't run**
18 **a center pivot.**

19 A. I think if we go back a little bit, we --
20 during the routing phase, we avoided all the center
21 pivots that we knew of.

22 **Q. Okay. But the farmer could make a**
23 **decision, as was mentioned, in the future that they**
24 **want to put a center pivot in somewhere else, they**
25 **might get a little more money and they think that the**

1 **land will hold it.**

2 A. And again, during the negotiations, if
3 the farmer mentioned in the future, I would like to
4 have a center pivot in this area, we would look to our
5 engineering group and say, how can we reroute the line
6 to accommodate for the property owner.

7 Q. Okay. In your appraisal process, do you
8 take any -- do you figure that 20 miles that goes
9 through more of a suburb area, do you take into account
10 the fact that that could be considered to -- it will
11 lower future property values by putting a transmission
12 line in a neighborhood or across a neighborhood or
13 backing up to someone's household? Because I've been
14 in real estate for years, it does have a big negative
15 effect on sales.

16 A. I think we would -- we would leverage the
17 relationship we have with our appraiser contractor to
18 determine that, and that would be part of the narrative
19 in that market data study would help us give guidance
20 on the value of each parcel.

21 Q. So your appraisal process does take into
22 account land that may not be in the same vicinity but
23 it has a transmission line going through it, comparing
24 those prices also to the basis of just the ground --
25 the value of the property?

1 A. Some of the comparables could include
2 those.

3 **Q. Don't you think it should include those**
4 **in order to get a fair price for the landowner?**

5 A. Yeah, and I would agree, that would be a
6 paired-sales analysis, but that's something that an
7 appraiser could -- could supply to us.

8 **Q. Okay. Thank you.**

9 JUDGE PRIDGIN: Thank you. I don't have
10 any questions. Any recross based on bench questions
11 from Staff?

12 MR. WILLIAMS: No.

13 JUDGE PRIDGIN: MI SO?

14 MR. SMALL: No, Your Honor.

15 JUDGE PRIDGIN: Thank you. United for
16 Missouri?

17 MR. LINTON: No.

18 JUDGE PRIDGIN: Public Counsel?

19 MR. OPITZ: No, Your Honor.

20 JUDGE PRIDGIN: Neighbors United?

21 MS. HERNANDEZ: Just one question, Your
22 Honor.

23 RECCROSS-EXAMINATION

24 QUESTIONS BY MS. HERNANDEZ:

25 **Q. You stated your rough guesstimate that**

1 **rerouting of the line would go through maybe 20 miles**
2 **of residential area, if you had to reroute the line.**

3 A. I'm sorry?

4 **Q. Did I understand that correctly?**

5 A. No. The question -- well, no. The
6 question was talking about the types of property that
7 the line would cross as it exists today, as the
8 proposal exists today, and how many miles would be in
9 property that would be more of a subdivision setting or
10 residential setting as opposed to farm ground. I think
11 that was the discussion.

12 **Q. All right. And you said 20 miles --**
13 **approximately 20 miles; is that correct?**

14 A. That's my best guess.

15 **Q. Okay.**

16 A. Yes.

17 **Q. Do you know what -- what areas are**
18 **around? I mean, what -- where -- right now, as you've**
19 **planned this line, what residential areas there are**
20 **that you could potentially reroute it to?**

21 A. I'm not clear on the question about
22 rerouting. That discussion talked about just property
23 that would cross as it's planned today. Never talked
24 about a reroute.

25 **Q. Okay. I misunderstood. Thank you.**

1 A. Okay.

2 JUDGE PRIDGIN: Thank you. Any redirect?

3 MR. ROSENCRANTS: Yes.

4 REDIRECT EXAMINATION

5 QUESTIONS BY MR. ROSENCRANTS:

6 **Q. Just a few points of clarification,**
7 **Mr. Brown. I think I heard you say in your direct and**
8 **your surrebuttal that you typically pay fair market**
9 **value for the easement that you purchase from**
10 **landowners; is that correct?**

11 A. That is correct.

12 **Q. And you pay that fair market value for an**
13 **easement as if you were purchasing it in fee?**

14 A. That is correct.

15 **Q. And the farmer still gets to utilize the**
16 **land around the mono poles for farming activities?**

17 A. That is correct, they could farm
18 underneath the wire and everything else, correct.

19 **Q. So these pictures that were shown to you,**
20 **why did you attach those to your -- to your testimony?**

21 A. I think they were a good depiction of
22 what's actually happening in the field. It shows that
23 cropland within the easement area underneath the wires.
24 It also showed -- one of the photos showed some grazing
25 activities in/around the mono pole structure, so it

1 just -- my point was that the farmers and our
2 transmission lines can coexist.

3 **Q. Mr. Brown, if -- I'm going take you**
4 **through a couple hypotheticals. Do you mind?**

5 A. Sure.

6 **Q. I'm big on hypotheticals. So I come to**
7 **you, I'm a landowner and I have plans for a center**
8 **pivot irrigation system. I'm negotiating an easement**
9 **with you, and the center pivot irrigation system that I**
10 **have planned and I have planned on installing a couple**
11 **years down the road will directly interfere with the**
12 **location of the transmission line. You're right under**
13 **one of the structures or right under the line. Are you**
14 **telling this Commission that -- that you would not pay**
15 **compensation based upon that objective in submittal to**
16 **you that demonstrates that there will be center pivot**
17 **irrigation on the property?**

18 A. If it was negotiated and it demonstrated
19 there was a loss, we would consider it -- consider
20 paying that.

21 **Q. Okay. And if I would demonstrate that to**
22 **your satisfaction, is that a yes, you would pay**
23 **compensation to me for the center pivot irrigation**
24 **system?**

25 A. That is correct.

1 **Q. Is it the same thing with aerial**
2 **applications, if I would demonstrate to you an actual**
3 **increased cost associated with your transmission line**
4 **and what it costs me to apply aerial spray to crops in**
5 **the area, is it your testimony that you would -- you**
6 **would pay compensation for that increased cost?**

7 A. That is correct.

8 **Q. And is it the same thing with pasture**
9 **land? I think that was another scenario.**

10 A. That's correct.

11 **Q. Is that a yes?**

12 A. Yes.

13 **Q. I think we talked a little bit about**
14 **ATXI's process for determining the compensation to be**
15 **paid for the rights it needs. I want to talk to you a**
16 **little bit about ATXI's process for determining the**
17 **payment of damages associated with its construction**
18 **activities. Are you familiar with that process?**

19 A. Yes.

20 **Q. Does ATXI pay for the damages it causes**
21 **associated with this construction activities?**

22 A. Yes, we do.

23 **Q. What do you pay?**

24 A. We would actually meet with the landowner
25 after the construction of the project and work with the

1 landowner to determine what the extent of the damage
2 is; is it rutting, compaction, and work with the
3 landowner to come up with an amount to pay for that --
4 that damage. You know, we want to make the landowner
5 whole. We want to bring those -- if it's crop, we want
6 to bring those lands up to where they have the same
7 ability to grow crops as they did before Ameren's
8 transmission line was there.

9 **Q. And that's over and above the amount of**
10 **compensation that you would pay for the actual easement**
11 **itself?**

12 A. That is correct.

13 **Q. Mr. Brown, can you describe the internal**
14 **process within ATXI which led to Schedule DBR-SR-2, I**
15 **think these are commonly referred to as the standards**
16 **and procedures which were a condition in Mr. Beck's**
17 **testimony?**

18 A. Yes, I can. We met internally and
19 reviewed the standards and procedures that were
20 associated with the Callaway-Franks transmission line
21 in central Missouri.

22 We also reviewed agricultural mitigation
23 agreement that was part of the Illinois Rivers project,
24 and we also looked at some concerns, some issues that
25 the landowners had during the public workshops, kind of

1 brought those three items together, and came up with a
2 document, the standards and procedures for the Mark
3 Twain project.

4 We met internally with legal, real estate
5 department, vegetation department, construction, and
6 engineering to develop these standards and procedures.
7 I believe that they go far and above what was in
8 Mr. Beck's original rebuttal testimony.

9 **Q. Thank you, Mr. Brown. I have no further**
10 **questions.**

11 JUDGE PRIDGIN: Thank you, Mr. Brown.
12 You may step down.

13 This looks to be a good time to recess
14 for the day. I've got a court reporter that's got a
15 local public hearing to work and Commissioners have
16 that to do as well this evening. Let me inquire of
17 Counsel. For tomorrow, did you plan on -- well, let me
18 just ask ATXI who did you want to have as your first
19 witness in the morning?

20 MR. TRIPP: Sorry, Judge?

21 JUDGE PRIDGIN: That's all right.

22 MR. ROSECRANTS: I think we're going to
23 start, and I want to make sure this is okay with
24 Jennifer, too, because I know you've got Powers coming
25 in. At one point, I thought he was going to be the

1 first witness on Tuesday.

2 MS. HERNANDEZ: Right.

3 MR. ROSENCRANTS: So if he's flexible on
4 that and you don't have a lot of questions for
5 Ms. Turpin, the real estate appraisal pocket, so to
6 speak. We can have her testify first and do Endorf and
7 then Powers, but it's up to you.

8 MS. HERNANDEZ: He's only going to be
9 here tomorrow and then he plans to fly back, so I mean,
10 as long as there's some flexibility if we get towards
11 noon and we're still, you know.

12 MR. ROSENCRANTS: If it's okay with you,
13 kind of go with our regular game plan, so to speak, our
14 order of witnesses, unless Mike you feel strongly --

15 JUDGE PRIDGIN: If it's okay with
16 Counsel, I just want to give Commissioners a heads up
17 so they will know how to prepare this evening.

18 MR. ROSENCRANTS: I appreciate that.

19 JUDGE PRIDGIN: And then I'll -- so I can
20 let them know.

21 MR. ROSENCRANTS: That would be fine.
22 Thank you.

23 JUDGE PRIDGIN: Anything else before we
24 go off the record? All right. We will adjourn. We
25 will resume at 8:30 in the morning. Thank you. We're

1 off the record.

2 (WHEREUPON, the hearing was, adjourned
3 until January 26, 2015 at 8:30 a.m.)

4 (NU Exhibit Numbers 36 through 44 were
5 marked for identification by the court reporter.)

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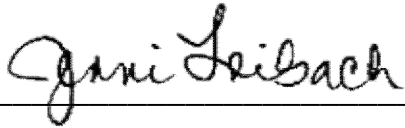
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CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss:
COUNTY OF WARREN)

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR No. 1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Court Reporter



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