SMITH LEWIS, LLP
ATTORNEYS AT LAW

P.O. BOX 918
COLUMBIA, MISSOURI 65205-0918
• • •
CITY CENTRE
111 SOUTH NINTH STREET, SUITE 200
COLUMBIA, MISSOURI 65201-4891
(573) 443-3141 • Fax (573) 442-6686

BRUCE H. BECKETT
WILLIAM JAY POWELL
JOHN L. ROARK
COLLY J. DURLEY
JAMES B. LOWERY
MICHAEL R. TRIPP
PHEBE LA MAR
SARAH E. GIBONEY
AMANDA ALLEN MILLER

RAYMOND C. LEWIS, JR. (1926-2004)

DANIEL G. BECKETT
BETHANY R. FINDLEY
MATTHEW R. QUETSCH

OF COUNSEL
ROBERT C. SMITH

PARALEGAL
CHERYL L. LOBB
DAWN KLEMPKE

LEGAL NURSE CONSULTANT
KAREN ASHRAFZADEH, RN

August 20, 2015

Mr. Morris Woodruff
Secretary of the Commission
200 Madison Street, Suite 100
Jefferson City, MO 65203-0360

Via Federal Express

Re: Case No. EA-2015-0145, Notice of Appeal

Dear Mr. Woodruff:

Enclosed for filing please find an original and three copies of a Notice of Appeal, filed with your office pursuant to the provisions of Section 386.510, RSMo. I have utilized the Notice of Appeal form that the Commission has made available for this purpose, which in all material respects is the same as Form 8-A issued by the Missouri Supreme Court. I ask that you mark as filed both original and the two additional copies of the notice that are being provided for the Commission's use. I also ask that you mark as filed the third copy of the Notice, which will be our file copy.

Also enclosed is our office check made payable to the Missouri Court of Appeals in the amount of $70 to cover the docket fee required by Supreme Court Rule 81.04(d).

Should you have any questions please contact me at the address or telephone number listed above, or via e-mail at the e-mail address listed next to my signature. Thank you for your assistance.

Sincerely,

James B. Lowery
lowery@smithlewis.com

Enclosures
Copy with Enclosures *via Federal Express*: Parties of Record

Missouri Public Service Commission

FILED

AUG 21 2015

Missouri Public Service Commission

10:00am MA

(Date File Stamp)

Judge or Division: Regulatory Law Judge Ron Pridgin	Appellate Number:
Appellant: Ameren Transmission Company of Illinois vs.	Missouri Public Service Commission File Number: EA-2015-0145
Respondent: Public Service Commission	

Notice of Appeal

Notice is given that Ameren Transmission Company of Illinois appeals to the Missouri Court of Appeals ■ Western ☐ Eastern ☐ Southern District.

August 21, 2015
Date Notice of Appeal Filed
(to be filled in by Secretary of Commission)

Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

CASE INFORMATION

Appellant Name / Bar Number: Jeffrey K. Rosencrants, #67605 James B. Lowery, #40503; Michael R. Tripp, #41535	Respondent's Attorney / Bar Number: Shelley Brueggemann, #52173
Address: 111 S. Ninth Street, Ste. 200 P.O. Box 918 Columbia, MO 65205-0918 1901 Chouteau Ave. PO Box 66149 St. Louis, MO 63166	Address: Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102
Telephone: (573) 443-3141 (314) 554-3955 Fax: (573) 442-6686	Telephone: (573) 751-7393 Fax: (573) 751-9285

Date of Commission Decision:	Date of Application for Rehearing Filed:	Date Application for Rehearing Ruled On:
July 22, 2015	July 31, 2015	August 19, 2015

DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

Certificate of Service

I certify that on August 20, 2015 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

PSC: Shelley Brueggemann, 200 Madison St., 2nd Floor, Jefferson City, MO 65102 (via federal express)

OPC: Dustin Allison, 200 Madison St., Suite 650, Jefferson City, MO 65102 (via federal express)

United for Missouri: David C. Linton, 314 Romaine Spring View, Fenton, MO 63026 (via federal express)

MIEC: Edward F. Downey, 221 Bolivar St., Suite 101, Jefferson City, MO 65101 (via federal express)

MIEC: Diana M. Vuylsteke, 211 N. Broadway, Suite 3600, St. Louis, MO (via federal express)

Appellant or Attorney for Appellant

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri.	))))))))	File No. EA-2015-0145

APPLICATION FOR REHEARING

COMES NOW Ameren Transmission Company of Illinois ("ATXI"), by and through its counsel, and pursuant to § 386.500.1, RSMo,[1] and 4 CSR 240-2.160, respectfully applies for rehearing of the Commission's Revised Order Granting Certificate of Convenience and Necessity in the above-captioned proceeding which was issued July 22, 2015 ("Revised Order"). While ATXI acknowledges that the Commission has now twice stated its belief that it has jurisdiction over ATXI and that the Commission is unlikely to change its view, ATXI is filing this Application pursuant to statute to preserve issues for appeal. For its Application for Rehearing, ATXI states as follows:

1. Commission decisions must be lawful (i.e., the Commission must have statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n*, 103 S.W.3d 753, 759 (Mo. *banc* 2003).

2. The question raised by ATXI's Application for a Certificate of Convenience and Necessity ("CCN") for the Illinois Rivers Transmission Project ("Project") was whether ATXI was an "electrical corporation" and "public utility" within the meaning of the PSC Law[2] and,

[1] Statutory references are the Missouri Revised Statutes (2000), unless otherwise noted.
[2] The PSC Law is codified as Chapter 386 and, as applicable to electrical corporations and public utilities subject to the Commission's jurisdiction, as Chapter 393, RSMo.

therefore, required to obtain approval of the Commission before it could begin construction of the Project under section 393.170.

3. The Commission's decision not to dismiss ATXI's application on the grounds that the Commission did not have jurisdiction over ATXI because ATXI was not a "public utility" under Missouri law constitutes error under the above-stated standard of review.

4. In its Revised Order, this Commission explained that its jurisdiction over ATXI was based upon the supervisory authority over "electrical corporations" transmitting electricity delegated to the Commission in section 393.140.1. *Revised Order* at 3. The Revised Order suggests that ATXI's status as a public utility subject to the Commission jurisdiction is simply a matter of applying the statutory definition of "electric plant" to ATXI's transmission line project, and reasoning backwards to then make ATXI an "electric corporation" because it owns "electric plant," which then subjects it to the Commission's supervisory powers as set out in section 393.140.1. This backwards analysis ignores the statutory scheme found in Missouri's PSC Law.

5. Foundational to the fact that the Commission does not have jurisdiction over ATXI is the basic principle of law that the Commission's jurisdiction is limited by statute. *State ex rel. Cass County, Mo. v. Pub. Serv. Comm'n*, 259 S.W.3d 544, 547-48 (Mo. App. W.D. 2008) (holding that even where statute authorized the Commission to grant CCNs for construction of electric plants, it did not authorize it to do so *after* electric plant had been constructed); *see also Public Serv. Comm'n v. ONEOK, Inc.*, 318 S.W.3d 134, 137 (Mo. App. W.D. 2009) (holding that absence of statute authorizing the Commission to receive by assignment causes of action of local gas distribution companies and to pursue those private actions for damages precluded it from doing so). This principle regarding the limits of the Commission's jurisdiction is well-settled. *See, e.g., State ex rel. Kansas City v. Pub. Serv. Comm'n*, 257 S.W. 462, 462-63 (Mo.

1923); *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 181 (Mo. App. W.D. 1960); *State ex rel. Pub. Serv. Comm'n v. Bonacker*, 906 S.W.2d 896, 898 (Mo. App. S.D. 1995). This is so even though the Commission's powers are an extension of the state's sovereignty. *State ex rel. Capital City Water Co. v. Pub. Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993). Accordingly, the Commission's jurisdiction is dictated by statute and not policy, and any authority for it to act must be exercised within the limits of its statutory authorization.

6. ATXI is not subject to the limited jurisdiction of the Commission. The Commission's jurisdiction is limited by statute to the *intra*state operations of public utilities and does not extend to utilities engaged only in interstate commerce. PSC Law is explicit on this point.

7. Section 386.250(1) provides, in part: "The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter . . . [t]o the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, *within the state* . . ." (emphasis added). Even more to the point, section 386.030 provides:

> Neither this chapter, nor any provision of this chapter, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

As the Missouri Supreme Court recently noted, enactment of section 386.030 by the Missouri legislature placed limits on the powers granted to the Commission "as to matters affecting interstate commerce." *State ex rel. MoGas Pipeline, LLC v. Pub. Serv. Comm'n*, 366 S.W.3d 493, 498 (Mo. 2012). The clarity provided by section 386.250 is this: in order to be subject to

Commission jurisdiction, the utility must manufacture, sell or distribute electricity for light, heat and power within Missouri. ATXI does not.

8. As has already been demonstrated, nothing in Missouri's PSC Law vests the Commission with jurisdiction over companies that are engaged only in interstate commerce through the transmission of electricity via interstate transmission facilities that would require the interstate transmission company to approach the Commission to request a CCN. Moreover, it is the FERC—and not the Commission—that has jurisdiction over the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce.

9. That it is the FERC that has jurisdiction over these interstate transmission facilities is made explicit by Section 201 of the FPA (16 U.S.C. § 824(b)) ("The provisions of this Part shall apply to the transmission of electricity in interstate commerce and to the sale of electric energy at wholesale in interstate commerce . . ."). And there is no question but that the lines ATXI will build and own are interstate transmission lines insofar as the United States Supreme Court has confirmed that this statute means what it says: "transmissions on the interconnected national grids constitute transmissions in interstate commerce." *New York v. Federal Regulatory Energy Comm'n*, 535 U.S.1, 16 (2002). Not only does FERC have exclusive jurisdiction over the interstate transmission of the electricity itself, but it also has jurisdiction over these interstate transmission facilities, like the transmission lines ATXI will build and own. 16 U.S.C. § 824(b) ("The Commission [FERC] shall have jurisdiction over all facilities for such transmission or sale of electric energy."). Consequently, the only activity conducted by ATXI—transmission of electricity in interstate commerce using interstate facilities—cannot, under section 386.030, be regulated by the Commission because the activities are in interstate commerce.

10. Although ATXI is not involved in the sale, manufacture or distribution of electricity for light, heat or power within Missouri, a determination that it is such a utility simply because ATXI owned an "electric plant" and, therefore, must be an "electrical corporation" would not automatically subject it to the Commission's jurisdiction. Appellate courts in Missouri have construed the definitions of "electrical corporation" and "electric plant" on several occasions, with the case law establishing that to be an electrical corporation under the jurisdiction of the Commission, the entity must serve or otherwise hold itself out to indiscriminately provide electric service to the general public at retail, thereby evidencing its dedication to public use. *See State ex rel. M. O. Danciger & Co. v. Pub. Serv. Comm'n*, 205 S.W. 36 (Mo. 1918); *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 9 S.W.2d 589 (Mo. *banc* 1928); *Palmer v. City of Liberal*, 64 S.W.2d 265 (Mo. 1933); *see also, Khulusi v. Southwestern Bell Yellow Pages, Inc.*, 916 S.W.2d 227 (Mo. App. W.D. 1995). The Commission itself has applied this test on numerous occasions. *See, e.g., In the Matter of the Investigation of the Provision of Local Exchange Telephone Service by Entities Other than Certificated Telephone Corporations*, 1985 Mo. PSC LEXIS 12 (1985) (Case No. TC-84-233). Consequently, a company that manufactures, sells or distributes electricity for light, heat or power within Missouri must also be dedicated to the public use in this manner before it is subject to the Commission's jurisdiction. Again, ATXI does not fall within these parameters.

11. The Commission implicitly acknowledges that ATXI is not a public utility like other public utilities when it waived in the Revised Order certain requirements otherwise applicable to public utilities in Missouri. *See Revised Order* at ¶ 2, p. 8. There are no such things as "half" public utilities, however. As *Danciger* makes clear, if a utility is a public utility subject to the Commission's jurisdiction, it is subject to the Commission's jurisdiction in all matters:

"[i]t is fundamental that the business done by respondent either constitutes him a "public utility," or it does not. If he is a public utility, he is such within the whole purview and for all inquisitorial and regulatory purposes of the Public Services Commission Act." *Danciger* at 40. ATXI is either a public utility subject to the Commission's control and jurisdiction in all respects or it is not at all. There is no in-between.

12. Because ATXI does not sell, manufacture or distribute electricity for light, heat or power within Missouri, and because it does not offer retail electric service to the general public in Missouri, it simply is not subject to Commission jurisdiction. As a matter of law, the Commission's limited jurisdiction does not extend to ATXI, and the Commission's Revised Order concluding otherwise is unlawful.

WHEREFORE, for the foregoing reasons, ATXI respectfully requests that the Commission enter its order granting rehearing on the issue of its jurisdiction over ATXI, and that the Commission determine that it does not have jurisdiction over ATXI and dismiss ATXI's Application for a Certificate of Convenience and Necessity, for the reasons outlined above.

Respectfully submitted,

/s/ James B. Lowery

James B. Lowery, Mo. Bar #40503
Michael R. Tripp, Mo. Bar #41535
SMITH LEWIS, LLP
P.O. Box 918
Columbia, MO 65205-0918
(T) 573-443-3141
(F) 573-442-6686
lowery@smithlewis.com
tripp@smithlewis.com
Attorneys for Ameren Transmission Company of Illinois

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the public version of the foregoing response has been e-mailed on July 31, 2015, to all parties of record.

/s/ James B. Lowery

An Attorney for Ameren Transmission Company of Illinois

FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

No. WD _____

[Please type or neatly print the information requested. This form must be filed with the Notice of Appeal (form 8-A) with the Circuit Clerk.]

Ameren Transmission Company of Illinois, Appellant,	James B. Lowery, MoBar#40503 Michael R. Tripp, MoBar#41535 P.O. Box 918 Columbia, MO 65205-0918 Jeffrey K. Rosencrants, MoBar#67605 PO Box 66149 St. Louis, MO 63166-6149
vs.	
Public Service Commission of Missouri, Party as of Right/Appellee,	Shelley Brueggemann, MoBar #52173 P.O. Box 360 Jefferson City, MO 65102-0360
Office of Public Counsel, Party as of Right	Dustin Allison 200 Madison Street, Suite 650 P.O. Box 2230 Jefferson City, MO 65102
United for Missouri, Intervenor	David C. Linton, MoBar #32198 314 Romaine Spring View Fenton, MO 63026
and	
Missouri Industrial Energy Consumers (MIEC), Intervenor	Edward F. Downey, MoBar #28866 221 Bolivar Street, Suite 101 Jefferson City, MO 65101 and Diana M. Vuylsteke, MoBar #42419 211 N. Broadway, Suite 3600 St. Louis, MO 63102
Date Notice filed in with Circuit Court	August 20, 2015 (filed with Commission)

The Record on Appeal will consist of a:

__X__ Legal File Only or _____ Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)

While the nation's electric transmission grid has been said to be the nation's supreme engineering achievement of the 20th century, there is a growing consensus that the grid is inadequate to serve this century's needs, including the need for continued reliability in the face of increased consumption and the need to transmit electricity generated by renewable forms of energy. This action arises from transmission projects to be constructed in Missouri by Ameren Transmission Company of Illinois (ATXI) that are designed to address some of these regional needs. This action arises from the question as to whether the Public Service Commission of Missouri (the Commission) has jurisdiction over ATXI and its construction of these lines.

ATXI is a company engaged in the construction and operation of electric transmission lines used for the interstate transmission of electricity at wholesale in Missouri, Illinois and other states. ATXI does not generate, sell or distribute electricity to the general public or otherwise furnish electricity to the general public at retail. ATXI is a member of a regional transmission organization (RTO) that operates under the jurisdiction of the Federal Energy Regulatory Commission, and ATXI is to construct several electric interstate transmission line projects approved by the RTO. These projects, known as MVP or "multi-value projects," have been approved by the RTO because they have been determined to enable the transmission system to reliably and economically deliver energy. Specifically, one of the projects that ATXI is to construct in Missouri is the Illinois Rivers Project, a 7-mile interstate transmission line. This Project is part of an additional transmission path in the region across four states and running about 480 miles, and the deadline for completion of the initial segment of these projects is 2019. In order to construct these projects, ATXI may need to exercise the power of eminent domain to obtain rights-of-way or other property rights.

In this action, ATXI filed a conditional application for a certificate of convenience and necessity for its Illinois Rivers Project in which ATXI sought either a determination that it was not a public utility, as defined by Missouri law, such that the Commission did not have statutory jurisdiction over it and, therefore, could not require ATXI to seek and obtain permission from the Commission in order to construct these lines; alternatively, ATXI sought a certificate of convenience and necessity for the Illinois Rivers Project should the Commission find that it had jurisdiction. On June 2, 2015, the Commission issued its Report and Order determining that ATXI was a public utility under its jurisdiction and granting it a certificate of convenience and necessity for the Illinois Rivers Project. The Commission reaffirmed its position in its July 22, 2015 Revised Order Granting Certificate of Convenience and Necessity. On August 19, 2015, the Commission issued its Order Denying Application for Rehearing, which results in this appeal.

ISSUES: (Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)

1. Whether the Commission erred in determining that ATXI, an interstate electric transmission company that does not provide electric service to the general public, was a public utility under Missouri law and, therefore, subject to the Commission's jurisdiction.

[Two (2) typewritten pages maximum]
(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)