

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Ameren Transmission)
Company of Illinois for Other Relief or, in the Alternative,)
a Certificate of Public Convenience and Necessity)
Authorizing it to Construct, Install, Own, Operate,) **File No. EA-2015-0146**
Maintain and Otherwise Control and Manage a)
345,000-volt Electric Transmission Line from Palmyra,)
Missouri, to the Iowa Border and Associated Substation)
near Kirksville, Missouri.)

**NEIGHBORS UNITED’S MOTION FOR RECONSIDERATION OF ORDER
REGARDING MOTION TO DISMISS**

COMES NOW Neighbors United Against Ameren’s Power Line (Neighbors United), by and through the undersigned counsel, and hereby moves the Commission to reconsider its November 4, 2015 Order Regarding Motion To Dismiss. In support hereof, counsel states as follows:

1. Commission Rule 4 CSR 240-2.160(2) states a motion for reconsideration may be filed within ten (10) days of the date the Commission issued the order and it shall set forth the specific grounds on which the applicant considers the Commission’s order to be unlawful, unjust, or unreasonable.

2. Neighbors United respectfully requests the Commission to reconsider its order on the following grounds: (1) The questions presented by ATXI’s Application call for constitutional interpretation and application. As such, deciding such questions is beyond the authority of the Missouri Public Service Commission; and (2) a Commission decision granting a certificate of convenience and necessity to ATXI is akin to a regulatory taking and thus violates Article 1, Section 35 of the Missouri Constitution, the Missouri Right-to-Farm amendment.

The Commission's Order is Unlawful, Unjust or Unreasonable
Because the Questions Presented by ATXI's Application Call for Constitutional
Interpretation and Application and Deciding Such Questions is Beyond the Authority
of the Missouri Public Service Commission

3. Article 1, Section 35 of the Missouri Constitution reads:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Article IV delineates the powers given to local government.

4. ATXI's Application requests the Commission grant it a Certificate of Convenience and Necessity. As stated in Neighbors United's Motion to Dismiss, an order granting ATXI a certificate to construct the transmission line in the location specified in the Application would remove some amount of farm and/or ranch property permanently from production.¹ ATXI's Application presents issues of property rights before the Commission that require constitutional interpretation and application.

5. The Commission's Order denying Neighbors United's Motion to Dismiss relies on *Missouri Southern R. Co. v. Public Service Commission*² for its finding that "...the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction." However, *Missouri Southern* is not dispositive here.

6. In *Missouri Southern*, the issue before the Commission was whether Missouri Southern Railroad Company was charging more than a lawful rate for service. The Supreme Court of Missouri found that:

¹ Application's Direct Testimony of Douglas J. Brown, p. 6, ll. 6-15.

² *Missouri Southern R. Co. v. Public Service Commission*, 214 S.W. 379, 380 (Mo. 1919).

[t]he fixing of rates for future business is legislative in character. The commission's inquiry resulted, not in a judgment respecting existing or past rates *or rights*, but in an order respecting rates to be charged in the future. The final act was the test of the character of the inquiry before the commission, *and was not judicial*.³

(emphasis added).

7. Unlike Missouri Southern, ATXI's Application does present issues of property rights that require constitutional interpretation and application. Such questions are judicial in nature and beyond the authority of administrative agencies like the Commission.⁴

8. As cited in Neighbors United's Motion to Dismiss, the appellant in *Fayne v. Department of Social Services* asked the Administrative Hearing Commission to decide constitutional issues. The Court found:

The questions presented by appellant's complaint to the AHC and petition to the circuit court call for constitutional interpretation and application, and thus are predominately, if not exclusively, legal in nature. Deciding such questions is beyond the authority of administrative agencies.⁵

9. Similarly in this case, any Commission action other than dismissal would require the Commission to decide such questions. Therefore, Neighbors United requests the Commission dismiss ATXI's application to allow the appellate courts to decide the constitutional issue raised, that being whether the Commission granting ATXI a certificate to construct the transmission line in the location specified in the Application is in violation of the Missouri Constitution, Article I, Section 35, in that it approves some

³ *Id.*

⁴ See *Duncan v. Missouri Bd. for Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo.App.1988). See also *Fayne v. Department of Social Servs.*, 802 S.W.2d 565 (Mo.App.1991).

⁵ 20A Mo. Prac., Administrative Practice & Procedure § 12:44 (4th ed.), citing *Fayne v. Department of Social Servs.*, 802 S.W.2d 565 (Mo.App.1991).

amount of farm and/or ranch property to be permanently removed from production for the siting of the transmission line.

The Commission's Order is Unlawful, Unjust or Unreasonable Because a Commission Decision Granting a Certificate of Convenience and Necessity to ATXI is Akin to a Regulatory Taking and Thus Violates Article 1, Section 35 of the Missouri Constitution, the Missouri Right-to-Farm Amendment

10. A Commission decision granting a Certificate of Convenience and Necessity to ATXI is essentially the first step in the list of steps for a public utility to condemn property through an eminent domain action.

11. The elements of an eminent domain action are:

- a. Whether the applicant has the authority to condemn;
- b. Whether the project has a public purpose;
- c. Whether there is a necessity for the project;
- d. Whether there is a description of the nature and scope of the interest to be condemned; and
- e. The requirement of a payment of just compensation.⁶

12. Any order by the Commission granting ATXI a Certificate of Convenience and Necessity will have a finding that the project is in the public interest because that is one of the Tartan Criteria requirements for granting a certificate. The Commission's granting of the order will also approve ATXI constructing the transmission line in a specified location. And the Commission's granting of the order will have a finding that the project is necessary, stated another way, there is a need for the service. The Commission's order contains many of the filing requirements for an eminent domain action and it will be used to support such an action in circuit court.

⁶ 35 Mo. Prac., Cont., Eq. & Stat. Actions Handbook § 35:3.

13. Without the authority from the Commission, ATXI could not site the project in Missouri and would not be able to complete the next step of filing an eminent domain action in circuit court to condemn the farming and ranching properties.

14. The plain language of Article 1, Section 35 of the Missouri Constitution leads to a finding that any action other than dismissal of the Application violates the constitutional provision. ATXI requests relief that would permanently remove citizens' property from production and prevent these citizen farmers and ranchers from engaging in farming and/or ranching practices. To state that the potential issuance of a Certificate of Convenience and Necessity does not deprive any member of Neighbors United of their property rights ignores the Commission's prominent place in the eminent domain process.

15. Because a Commission decision granting ATXI a Certificate of Convenience and Necessity allows ATXI to seek condemnation of property in violation of the Missouri Constitution, the Commission must dismiss ATXI's Application.

WHEREFORE, Neighbors United moves for the Commission to reconsider its Order Regarding Motion To Dismiss and dismiss ATXI's Application, and for any other relief the Commission deems just and reasonable in the circumstances.

Respectfully submitted,

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ATTORNEY FOR NEIGHBORS
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LINE

Certificate of Service

I certify that a true copy of the above and foregoing was served to all counsel of record by electronic mail this 13th day of November 2015.

/s/ Jennifer Hernandez
Jennifer Hernandez