

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

In the Matter of the Application of Ameren Transmission)
Company of Illinois for Other Relief or, in the Alternative,)
a Certificate of Public Convenience and Necessity)
Authorizing it to Construct, Install, Own, Operate,) File No. EA-2015-0146
Maintain and Otherwise Control and Manage a)
345,000-volt Electric Transmission Line from Palmyra,)
Missouri, to the Iowa Border and Associated Substation)
Near Kirksville, Missouri.¹)

ATXI'S STATEMENT OF POSITIONS

COMES NOW Ameren Transmission Company of Illinois (“Company” or “ATXI”), and in compliance with the Commission’s November 28, 2015 *Order Granting Motion to Amend Procedural Schedule*, hereby files its statement of positions on the issues in this case, as follows:

1. Does the Commission possess authority to approve ATXI’s application?

Yes.

As noted, the Commission has determined, in File No. EA-2015-0145, that ATXI is an electrical corporation and public utility within the meaning of section 393.170.1 and, as such, that it possesses authority to decide a CCN case involving ATXI assets in Missouri. That determination has the force and effect of law. Section 386.490.3, RSMo.²

As also addressed above, the Staff takes the position that yes, the Commission has the authority to approve the application, but subject to the condition that the CCN not be formally “granted” until “franchises” are obtained.

The only other issue of the Commission’s authority that has been raised in this case arises from the Neighbors’ attempt to entirely dismiss this case based upon its “right-to-farm”

¹ The project for which the CCN is sought in this case also includes a 161,000-volt line connecting to the associated substation to allow interconnection with the existing transmission system in the area.

² The determination is the subject of an appeal before the Western District of the Court of Appeals, Case No. WD 78939. However, the determination was not stayed.

amendment arguments. Those arguments have been fully addressed and rebutted by the Company and the Staff, and by the Commission itself. *See ATXI's Response in Opposition to Neighbors United's Motion to Dismiss* [EFIS Item No. 70], *Staff's Response to Neighbors United's Motion to Dismiss Application* [EFIS Item No. 71] and *Order Regarding Motion to Dismiss* [EFIS Item No. 75]. We will not further burden the record with a repeat of those arguments here but will, as needed, address them in our post-hearing briefing.

2. Does the evidence establish that the Mark Twain transmission line project, as described in ATXI's application in this docket and for which ATXI is seeking a certificate of convenience and necessity ("CCN"), is "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo?

Yes. Under the well-established standards governing when construction is "necessary or convenient for the public service,"³ the evidence overwhelmingly establishes that the Mark Twain transmission line project (the "Project") is necessary or convenient for the public service, and that a CCN should be issued. The law in Missouri is that the term "necessity" in section 393.170 "does not mean 'essential' or 'absolutely indispensable,'" but rather, it means that "an additional service [here, the Project] would be an improvement justifying its cost." *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Comm'n*, 848 S.W.2d 593 (Mo. App. W.D. 1993), *citing State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo. App. W.D. 1973).

As applied to the Project, the law is that "[i]f it [the Project] is of sufficient importance to warrant the expense of making [building] it, it is a public necessity" within the meaning of the Public Service Commission Law. *State ex rel. Mo., Kan. & Okla. Coach Lines*, 179 S.W.2d 132, 136 (Mo. App. W.D. 1944) (emphasis added). Put another way, the issue is whether the benefits

³ Section 393.170, RSMo. (2000).

of the Project are worth its costs? The evidence in this case overwhelmingly establishes that the answer to that question is “yes.”

A. The Project - Generally

The Project consists of a new approximately 95-mile, 345 kilovolt (“kV”) transmission line from a connection at ATXI’s Maywood switching station (located west of Palmyra, Missouri, in Marion County) to Kirksville, Missouri, with the line continuing North from the Kirksville area to an interconnection on the Iowa border with another 345 kV transmission line being constructed by Mid-American Energy in Iowa. The Project also includes a new 345 kV substation near Kirksville (the Zachary Substation) and a 2.2 mile 161 kV line from the Zachary Substation to Ameren Missouri’s existing 161 kV Adair Substation. The connection between the Zachary and Adair Substations provides an additional source of supply to the Adair Substation and resolves existing reliability concerns in Northeast Missouri. It is estimated the Project will cost \$224 million, approximately 8% of which will ultimately be reflected in transmission charges to MISO-member load serving entities in Missouri.

The Project is made up of all or part of two of 17 MISO-approved Multi-Value Projects (“MVPs”), which were evaluated, analyzed and approved as part of MISO’s FERC-approved Transmission Expansion Planning process (“MTEP”). The MTEP reflects a key part of MISO’s important responsibilities as a regional transmission organization (“RTO”), including the responsibility to identify system expansions that will ensure the future reliability of the transmission system under MISO’s operational and planning control, to support a reliable and competitive supply of electric power and to support energy policy mandates. The MTEP is an open, transparent process with participation by transmission owners (like ATXI) and other stakeholders, including state regulatory commissions (like this Commission, individually and as

a member in MISO's regional state committee, the Organization of MISO States), public consumer advocates, environmental representatives, end-use customers and independent power producers.

The 17 projects that comprise the MVP portfolio were determined by MISO to be necessary to facilitate the delivery of renewable energy, resolve numerous reliability issues, reduce transmission line losses and provide economic and efficiency benefits to customers throughout the MISO footprint.⁴ The MVP portfolio will also facilitate the delivery of other new generation throughout the MISO footprint, such as new combined cycle natural gas facilities, since one of the routing considerations used by MISO in determining the location of the MVPs were the new transmission lines' proximity to natural gas pipelines. The Project, like the portfolio as a whole, will provide additional transmission capacity to facilitate the delivery of renewable energy resources in Missouri and will produce market efficiency benefits allowing load-serving entities to serve their customers at the lower costs, as described by ATXI witness Dr. Todd Schatzki. It will also provide local economic benefits, as described by ATXI witness Dr. Geoffrey Hewings, as well as improved reliability and voltage support to the transmission system in Northeastern Missouri, as addressed by ATXI witness Dennis Kramer. In addition, it will provide significant new tax revenues, as addressed by ATXI witness Joseph LaMacchia.

As part of the MVP portfolio approval process, MISO conducted robust cost-benefit analyses to evaluate the economics of the overall MVP portfolio. Those analyses were completed first in 2011, when the MVP portfolio was approved, and updated in 2014, as part of the triennial review required by MISO's FERC-approved tariff. The MISO analyses demonstrate that the MISO-wide benefits from the entire MVP portfolio exceed the costs by 1.8 to 3.0 times,

⁴ All of the MVPs, except the line at issue in this case and one line segment in Wisconsin, have received all required state utility commission approvals.

and that the benefits for Missouri of the entire portfolio are slightly better than for the MISO region as a whole, at between 1.8 to 3.2 times the cost. The more specific analyses conducted by Dr. Schatzki as referenced earlier, which evaluated the benefits to Missouri with the Project in service (as compared to the case where the Project is not in service), show that because of the critical importance of the Mark Twain Project to the MVP portfolio as a whole, the benefits of the Project to Missouri are even more significant – at least 24 times greater (and could be as much as 68 times greater) – than the costs for the Project that would be borne by Missouri load-serving entities. This is owing to the fact that the Project is a key linchpin for the entire MVP portfolio because it is a critical component of a new 345 kV transmission path from the Northern and Western parts of MISO’s footprint to Missouri and continuing on to other parts of the MISO footprint, east of Missouri.

While it is not a baseline reliability project, an additional benefit of the Project is that it also addresses existing reliability concerns on the Ameren Missouri transmission system in Northern Missouri (and on the interconnected cooperative transmission system in that area) by preventing certain low-voltage conditions that could arise if various events occur on the system during peak conditions (e.g., loss of one or more transmission system components due to a storm, equipment failure, etc.). North American Reliability Council (“NERC”) standards require that these low-voltage conditions be addressed, meaning that if not addressed by the Project, they would have to be addressed by Ameren Missouri at a cost in excess of the cost to Ameren Missouri of the entire Project and without receiving the many benefits of the Project that are unrelated to reliability improvements in the region.⁵

⁵ NERC has been delegated authority and responsibility by the FERC to set and enforce standards to ensure the reliability of the transmission system.

The Commission's Staff supports the Project, with certain conditions which we will address in more detail in response to Issue No. 2, below. As also discussed there, the Company has worked with the Staff since Staff first proposed the conditions in the rebuttal testimony of Staff witness Dan Beck, and has reached agreement with the Staff on terms that fully satisfy all but one of the Staff's recommended conditions. The one condition that has not been resolved is in the nature of a difference among counsel for the Staff and counsel for ATXI regarding the law governing when and how the Commission can formally "grant" a CCN. This difference of legal opinion does not reflect any substantive disagreement between ATXI and the Staff on whether the Project meets the statutory (or customary non-statutory) standards for a finding that the Project is necessary or convenient for the public service. The Company will also address these issues in response to Issue No. 2, below.

The only party opposing the Project is a group calling itself "Neighbors United Against Ameren's Power Line" (the "Neighbors"), formed shortly after ATXI first began its public open house process regarding the Project (in August 2014). As previously addressed in filings relating to the Neighbors' attempts to dismiss this case entirely, the Neighbors make numerous claims in an effort to block the Project and to ultimately thwart the intended benefits the MVP portfolio is designed to provide, including claims arising under Missouri's recently-adopted "right-to-farm" constitutional amendment, the claimed impact of transmission lines on land values, the perceived risks from electromagnetic fields ("EMFs") and stray voltage and alleged impediments to farming. If these kinds of claims were valid, needed transmission (and other needed electric and other infrastructure) could effectively never be built, or at least not in rural areas of the state.

The Company will not unduly lengthen this filing with a blow-by-blow rebuttal of the many points the Neighbors attempt to make through their witnesses, or via the local public

hearing testimony (presented, predominantly, by members of the Neighbors). The Company has presented testimony that thoroughly and thoughtfully debunks the Neighbors' claims based upon facts, analyses, relevant experience and scientific evidence, in contrast to the unsubstantiated speculation, "what-if" scenarios and "parade of horrors" advanced by the Neighbors. ATXI urges the Commission to review its witnesses' testimonies carefully and to ask them questions during the evidentiary hearings.

B. The *Tartan* Factors

As discussed above, under the statutory standard reflected in section 393.170, as applied by Missouri's courts, the Project should be approved because it is clear that the improvement to the transmission system the Project enables is easily worth the expense of the Project. The same conclusion is evident upon application of certain factors that the Commission often applies as a guide to making CCN decisions; that is, under the five non-statutory factors outlined in *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994). Those factors are as follows:

- Whether there is a need for the facilities and service;
- Whether the applicant is qualified to own, operate, control and manage the facilities and provide the service;
- Whether the applicant has the financial ability for the undertaking;
- Whether the proposal is economically feasible; and
- Whether the facilities and service promote the public interest.

Need for the Facilities

The need for the Project was in part already addressed above, but ATXI will elaborate further here. The Project is an important part of the entire MVP portfolio, providing a link between the 345 kV transmission system to the North in Iowa (and beyond), and also a link to the

345 kV transmission system to the East. The connection on the East end is in Marion County, Missouri, via an interconnection with ATXI's Illinois Rivers Project at the Maywood Switching Station. As the Commission knows, it approved the Missouri portion of the Illinois Rivers Project, which includes Maywood, in the Spring of 2015 in File No. EA-2015-0145. The rest of the Illinois Rivers Project has been approved by the Illinois Commerce Commission. The Illinois Rivers Project as a whole consists of three of the 17 MVPs (MVP Nos. 9-11).

All load-serving entities in MISO will pay transmission charges arising from all of the MVP projects; in Missouri's case, about 8% of the total. This means that Ameren Missouri (primarily) and the City of Columbia (to a small extent) will pay about 8% of the charges arising not just from the Project, but from all of the other MVPs. Ameren Missouri/City of Columbia will be legally obligated to pay the transmission charges arising from the MVP portfolio even if the Project were not built. As earlier noted, without Mark Twain, the very significant benefits enabled by the Project (which are greater than the overall portfolio's benefits) would not exist because there would no longer be a connection to the larger MVP portfolio in Iowa, or in Eastern Missouri, which would mean that the planned transmission path from more Northerly and Westerly parts of MISO (e.g., North Dakota/Minnesota) to more Easterly portions (e.g., Indiana) would not be completed, in contravention of the fundamental design of the MVP portfolio. Failure to complete this path would thwart a significant portion of the MVP portfolio's reduction of production costs, its ability to contribute to the satisfaction of state renewable portfolio standards and other policy objectives and would undermine the MVP portfolio's overall role in helping to ensure the future reliability of the transmission system as a whole, both in Missouri and the MISO footprint in general. Specific to Missouri, the Project fully addresses the low-voltage concerns that currently exist on the transmission system in Northeast Missouri. The Project also

facilitates the development of generation that will have zero (or lower, as compared to the existing generation mix) emissions, a benefit that has become even more important in the wake of the USEPA's Clean Power Plan ("CPP"), which will undoubtedly require significant displacement of coal-fired generation, which is not only prevalent in Missouri but in the MISO footprint in general. The Mark Twain Project, like all of the MVPs, is necessary if all of the MVP portfolio benefits are to be realized because the benefits of the portfolio as a whole depend on construction of the portfolio as a whole.

While the MVP analyses did not examine benefits arising solely from the Mark Twain Project, ATXI witness Dr. Schatzki has done so as described above, finding very significant benefits to Missouri with the Project as opposed to without it, as has ATXI witness Dr. Hewings, whose analysis demonstrates benefits to Missouri in the form of approximately 1,880 job years over the life of the construction of the Project. ATXI witness LaMacchia's testimony confirms the substantial tax benefits the Project will bring to Missouri. These kinds of benefits have routinely been relied upon by the Commission when examining the need for projects such as this. *See, e.g., Tartan, supra* (The proposed improvement will "represent a major capital investment . . . which will require the employment of workers during the construction phase of the project, and for the operation of the pipeline"); *see Intercon Gas, supra* (citing to evidence that the project at issue would produce fuel savings and lead to increases in employment and tax revenues in its discussion of the first *Tartan* factor, the need for the project).

Simply put, the line is necessary and convenient for the public service because it is needed to realize the many benefits it provides, both individually and as an important part of the MVP portfolio as a whole.

Qualifications/Financial Ability

No party questions ATXI's qualifications to construct, own, operate or finance the Project, and the only party to address those issues at all – the Staff – has affirmatively indicated that it agrees ATXI possesses the proper qualifications and that it has the requisite financial capability.

Economic Feasibility

The Staff agrees that the Project is economically feasible, relying upon the fact that under MISO's FERC-approved tariff (which will govern the open access transmission service to be provided by ATXI on the Mark Twain transmission line), ATXI is assured of receiving revenues to cover its revenue requirement through MISO transmission charges paid by load-serving entities in the MISO footprint. It is true that this fact is one reason the Project is economically feasible. However, the Staff takes a narrower view of economic feasibility than is necessary, or that is traditionally taken by the Commission itself. In assessing economic feasibility, the Commission routinely relies on projections of the economics of the proposal. In *Tartan*, the Commission relied on projected propane versus natural gas costs (in the face of opposition to the gas pipeline by propane dealers). Necessarily, the MISO and Schatzki analyses rely on projections of lower production costs and emissions, and reduced system congestion to conclude that the benefits of the MVP portfolio and the Project far outweigh its costs. Projections or not, those analyses also show economic feasibility. The fact that ATXI's shareholders are willing to finance the Project also shows economic feasibility. *See, e.g., Ozark Energy Partners, LLC, (GA-2006-0561) (Report and Order, Feb. 5, 2008)* (where the Commission observed that an applicant's ability to secure financing for a project in a section 393.170 case is "overwhelming evidence that the proposal is economically feasible").

In summary, there is compelling substantial and competent evidence establishing that the Project is economically feasible.

Promoting the Public Interest

"The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding. . . . Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest." *Tartan, supra*. Consequently, having demonstrated that positive findings on the first four standards are fully supported by the evidence in this case, it follows that the public interest will indeed be promoted by approval of the Project, notwithstanding the Neighbors' stance regarding the Project.

While it is undoubtedly true that the Neighbors have been quite vocal in making clear that they do not want the Project to be built, public interest is not restricted to consideration of only (or even primarily) the interests of affected landowners. To the contrary, "the 'rights of individuals with respect to issuance of a certificate are subservient to the rights of the public . . .'" *In re: Union Elec. Co.*, 2003 Mo. PSC LEXIS 1053 at 41 (Case No. EO-2002-0351 August 23, 2003) (quoting *Missouri Pac. Freight Transport Co. v. Pub. Serv. Comm'n*, 288 S.W.2d 679, 682 (Mo. App. W.D. 1956)). Put another way, the "'public interest' is far broader than the Neighbors' interests and in fact "the rights of individual groups are subservient to the rights of the public in general." *In re: KCP&L*, 2009 Mo. PSC LEXIS 200 at 63. The question is not whether the Neighbors welcome the Project; clearly they don't. The question is whether the expense of building it is worth the improvement it will bring to the public as a whole, which is

the public interest this Commission is charged with promoting.⁶ The evidence demonstrates that the answer to that question is “yes.”

3. ***Do §§ 393.170 and 229.100, RSMo., require that before the Commission can lawfully issue the requested CCN the evidence must show the Commission that where the proposed Mark Twain transmission line project will cross public roads and highways in that county ATXI has received the consent of each county to cross them? If so, does the evidence establish that ATXI has made that showing?***

ATXI does not agree that Issue No. 3 is properly stated or that it fairly characterizes the issue presented by one of the seven conditions proposed by the Staff through the rebuttal testimony of Dan Beck, or the issues raised by the Neighbors relating to approvals of the five counties through which the Project passes.⁷ The proper question is “what relevance, if any, does section 229.100 have to a section 393.170.1, proceeding, and is any condition relating thereto appropriate?” The answer to that question is “no,” as the Commission has already recognized, and as discussed below in connection with Issue No. 4 and Staff’s recommended condition number 2.

4. ***If the Commission decides to grant the CCN, what conditions, if any, should the Commission impose?***

Status of Recommended Conditions

The Staff had originally recommended the imposition of seven conditions, which are outlined starting at line 20 on page 16 and continuing through line 25 on page 17 of Mr. Beck’s

⁶ The Commission should also be mindful of the fact that the Neighbors, while vocal, represent a small percentage of the residents in the five counties where the Project is to be constructed, and should also be mindful of the politics that face the county commissions in those counties who have passed “canned” and inaccurate resolutions “opposing” the Project, at the urging of the Neighbors. The political pressures the Neighbors are bringing to bear have nothing to do with the determinations this Commission is charged with making in a CCN case such as this.

⁷ *List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements* [EFIS Item No. 130] (Indicating that the listing of an issue in the pleading does not mean that all parties agree that an issue is in fact and issue, or is properly stated).

rebuttal testimony. Only one of them remains at issue (the 2nd condition dealing with a purely legal issue), as addressed further below. For convenience, we have reproduced them here:

1. The plans and specifications for the construction of the proposed Mark Twain Project that ATXI is developing shall be filed with the Commission as required by 4 CSR 240-3.105(1)(B)2. **This condition was satisfied by the filing of ATXI witness David Endorf's Surrebuttal Testimony.**
2. ATXI will provide all required approvals [sic] 4 CSR 240-3.105(1)(D) or seek an appropriate waiver prior to the granting of the authority sought, as provided by 4 CSR 240-3.105(2). **To be addressed in detail below.**
3. That the certificate is limited to the construction of this line in the location specified in the application, and as represented to landowners on the aerial photos provided by ATXI, unless a written agreement from the landowner is obtained, or ATXI gets a variance from the Commission for a particular property. **Staff and the Company have agreed on specific language in satisfaction of this condition, as reflected in Exhibit A attached hereto, and as discussed below.**
4. That absent a voluntary agreement for the purchase of property rights, the transmission line shall not be located so that a residential structure currently occupied by the property owners will be removed or located in the easement requiring the owners to move or relocate from the property. **This condition is satisfied by ATXI's agreement to it, as indicated by the surrebuttal testimony of ATXI witness Maureen Borkowski.**
5. That ATXI shall survey the transmission line location after construction and record the easement location with the Recorder of Deeds in the appropriate counties. ATXI shall also file a copy of its survey in this case. **Staff and the Company have agreed on specific language in satisfaction of this condition, as reflected in Exhibit A hereto, and as discussed below.**
6. That ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DB-R-2 attached to this Rebuttal Testimony. **Staff and ATXI have agreed that Schedule DBR-SR2 to the surrebuttal testimony of ATXI witness Doug Brown satisfies this condition, which we will discuss further below.**
7. That ATXI shall be required to file with the Commission the annual report it files with FERC. **This condition is satisfied by ATXI's agreement to it, as indicated by the surrebuttal testimony of ATXI witness Maureen Borkowski.**

Based on the foregoing, the Company has no objection to the imposition of conditions 1, 4 and 7, as originally proposed by Mr. Beck, and to the imposition of conditions 3, 5 and 6, as subsequently modified and agreed upon between the Company and the Staff.

For the reasons given below, condition 2 is unnecessary and inappropriate.

Discussion of Agreed-Upon and Revised Conditions 3, 5 and 6

As discussed in the surrebuttal testimony of ATXI witness Doug Brown, ATXI had no objection to the basic “spirit” of Mr. Beck’s conditions 3, 5 and 6, as originally proposed, but did have some concerns about the practicality of implementing those conditions without modification and greater specificity. Consequently, Mr. Brown proposed some modifications to the exact terms Mr. Beck had outlined. As a result of discussions with the Staff about those concerns and Mr. Brown’s recommended modifications, agreement has been reached with the Staff on the specific conditions that ATXI agrees are appropriate. Both sides agree that this language satisfies the intent of Mr. Beck’s original conditions 3, 5, and 6 while addressing the concerns ATXI had. These specific, agreed-upon conditions are set forth in Exhibit A attached hereto.

With respect to condition 3 specifically, Mr. Beck’s goal in proposing a condition was to ensure that ATXI would either locate the line on the 377 parcels identified as being impacted by the Project route in the location depicted on aerial photos made available online and at Open Houses hosted by ATXI as part of the final route selection process or, if adjustments had to be made because of geotechnical or other survey work that cannot be completed until later, that ATXI would work with landowners in good faith in an attempt to reach agreement on the adjustment. As Mr. Brown also discusses in his testimonies, ATXI often works with landowners to address other concerns and in doing so may adjust the precise line location on a parcel as a

result of those efforts. As originally proposed by Mr. Beck, condition 3 in effect would have precluded adjustments for these reasons, even if agreed upon or necessary (due to geotechnical or survey results) to safely construct the line. Mr. Beck's second concern was that geotechnical or survey results might necessitate obtaining an easement over a parcel not identified among the 377 identified as being on the final route.

The condition agreed upon with the Staff addresses these concerns by requiring that ATXI not adjust the route on any of the identified 377 parcels (as compared to how it is depicted on the aerial photos of those parcels) unless (a) the landowner agrees, or (b) geotechnical or survey work necessitates an adjustment, in which case ATXI must still negotiate in good faith in an attempt to reach agreement with the landowner. With respect to other parcels, ATXI must either obtain the agreement of the owner or must come to the Commission to obtain permission to seek an easement over such other parcel, with justification for why an easement over the other parcel is needed⁸.

With respect to Mr. Beck's condition 5, the goal was to make sure that when the Project was complete there was a readily-identifiable and verifiable, specific, surveyed location for the entire line. The agreed-upon terms for condition 5 in Exhibit A accomplishes that goal.

With respect to Mr. Beck's condition 6, Mr. Beck identified three different documents, all of which related to other transmission line projects for other Ameren affiliates, and recommended that the terms of one of the documents be implemented on the Project. These documents, in broad terms, dealt with right-of-way acquisition, construction practices, interaction with landowners, mitigation of Project impacts and restoration of lands following

⁸ While not provided for in the language of condition 3 agreed upon between ATXI and the Staff, as set forth in Exhibit A, ATXI urges the Commission to adopt a condition that also states that absent extraordinary circumstances, the Commission intends to rule on any such requests within 30 days after the request is made so as to not cause undue delays in the Project.

construction. In some respects, the three documents overlapped and were at times inconsistent with each other, and in a few other cases, the terms were inappropriate for the Project or outdated. In order to address Mr. Beck's goals, ATXI in effect took the basic terms of the three documents and tailored them to the Project, while avoiding redundancy and inconsistency. This resulted in Schedule DBR-SR2 to Mr. Brown's surrebuttal testimony, which is attached hereto as Exhibit B and which has been agreed upon by the Staff. In certain cases, in order to address concerns that have been expressed (e.g., during the Local Public Hearings), Exhibit B attached hereto goes beyond any requirements reflected in the three documents initially cited by Mr. Beck.

Discussion of Condition 2

In essence, Mr. Beck's condition 2 reflects a Staff legal interpretation of the "franchise" language appearing in subsection 2 of section 393.170. As ATXI understands the Staff's position (which Mr. Beck's condition 2 does not make clear), Staff counsel believes that a CCN cannot be formally "granted" until such time as the utility has obtained a "franchise"⁹ from municipal authorities through which the (here) transmission line will pass. Further, it is ATXI's understanding that the Staff does not believe that the Commission is precluded from fully deciding this case on the merits; i.e., from deciding that the Project is necessary or convenient for the public service (including the application of the *Tartan* factors) and issuing a Report and Order, promptly following briefing of the case, making those determinations and otherwise addressing any conditions, including this one. However, it is ATXI's understanding that the Staff's position is that even though a decision on the merits can (and we believe Staff agrees,

⁹ In this context, Staff would view the franchise as permission to use (or cross over) public roads in a county, city, town or village; i.e., an assent under section 229.100.

should) be made at that time, “the CCN itself” should not “issue” or “be granted” until franchises are later obtained and submitted.¹⁰

If the Staff’s position were correct (as discussed below, it is not), it would mean that even in the situation where this Commission has determined that the Project is necessary or convenient for the public service (i.e., that it is an improvement justifying the cost and ought to be built), it could not be built in a particular county until such time as the County Commission in that county (and for construction to be completed in counties, ultimately in all five counties through which it passes) has granted an assent pursuant to section 229.100, RSMo (if section 229.100, RSMo applies, which is in substantial question as discussed below). Effectively, acceding to the Staff’s position could be viewed as potentially creating a circumstance where five elected county commissions could in theory attempt to countermand this Commission’s delegated authority to make the public convenience, necessity and public interest determinations the General Assembly has given to this Commission and this Commission alone.¹¹

As earlier noted, such a position is at odds with rulings this Commission has already made in this case. *See Order Regarding Motion to Dismiss*, where the Commission rejected the Neighbors’ arguments for dismissal (including based on their claims that assents have not and, they claimed, could not be obtained). In rejecting that argument, the Commission ruled that it had the power to grant the CCN regardless of the status of county assents: “In short, the Commission may approve the CCN before assent of the county commissions is shown, while conditioning the effectiveness of the CCN on the subsequent submission of proof that the assents have been obtained.

¹⁰ Or, alternatively, until evidence that they have been obtained has been submitted, per 4 CSR 3.105(1)(D)(1).

¹¹ To be clear, to the extent section 229.100 applies, the county commissions would not have authority to deny an assent simply because of political pressure or any other reason not solidly grounded in actual undue interference with a road.

Therefore, the existence or non-existence of such assents do not provide a basis for dismissal of the Application.” As discussed below, there is no need to impose such a condition at all.

There is no need to impose such a condition at all because, to the extent the Staff contends that the CCN cannot “be granted” (i.e., that Commission permission to start construction cannot spring into effect until later) or that assents otherwise are required before a CCN is effective, the Staff misreads and misapplies section 393.170, as explained further below.

First, any “franchise” requirement exists only in subsection 2 of section 393.170. Case law in Missouri is clear and unbroken on this point; that is, there are two, distinct kinds of permission and authority for which applications can be made under section 393.170, subsection 1 authority (referred to by the cases as a “line certificate”), and subsection 2 authority (referred to by the cases as an “area certificate”). This case is a subsection 1 line certificate case which simply seeks authority to construct the line; it does not seek (nor need it seek) authority to exercise rights under a franchise, even if there is a franchise requirement in a subsection 2 case because this is not a subsection 2 case.

While we will not go into an exhaustive legal analysis of the question here (we will address it in greater detail in our post-hearing briefs), we draw the Commission’s attention to the discussion of an area versus a line certificate case in *State ex rel. Harline v. Pub. Serv. Comm’n*, 343 S.W.2d 177, 182 (Mo. App. W.D. 1960) and the Court of Appeals’ continued recognition that there are two distinct kind of CCN cases in *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. W.D. 2005) and *State ex rel. Cass County v. Pub. Serv. Comm’n*, 259 S.W.3d 544 (Mo. App. W.D. 2008). *See also State ex rel. Webb Tristate Gas Co. v. Pub. Serv. Comm’n*, 452 S.W.2d 586 (Mo. App. K.C. 1970), which cites *Harline*. *See also Mo. Utilities Co. v. Scott-New*

Madrid-Miss. Elec. Coop., 475 S.W.2d 25, 32 (Mo. 1971) (Also recognizing that it is subsection 2 of section 393.170 that requires a franchise: “If the legislature intended to require electric Co-ops to obtain municipal consent, it could have so provided, as it did with respect to electric utilities in § 393.010 and § 393170(2)” (emphasis added)). *Harline* and these cases recognize that the term “franchise” as used in subsection 2 implies a *quid pro quo*, that is, a utility obtains a franchise so that it can use the municipality’s roads to install a utility system *in exchange for* obligating itself to *provide service to all customers* in the franchised area. The courts have never recognized or implied that the question of whether a “franchise” has been obtained is relevant in any way in a subsection 1 line certificate case.

In such cases, it *may* make sense for the Commission to condition the formal “grant” of the CCN on the franchise since the municipal authority at issue is exercising its right to *choose a service provider* for its citizens. In a line certificate case, however, as here, it makes no sense because there is no such *quid pro quo* at issue – ATXI is not going to be a service provider to electric customers in any of the five counties at issue, but instead will be providing open-access transmission service to users of the bulk transmission system (other utilities and wholesale power buyers and sellers), including providers who do actually serve customers, like Ameren Missouri under MISO’s open access transmission tariff.

Second, even if an assent under section 229.100 is *a* type of a “franchise” (sometimes viewed as the permission to use roads), the PSC Law itself demonstrates that it is not a “franchise” *within the meaning of the PSC Law* when the assent is not being granted as means to choose an electric supplier and to obligate that electric supplier to provide electric service to the county residents. Consequently, even if the Staff were right (that there is no such thing as separate “subsection 1” and “subsection 2” authority under section 393.170; the cases show that

the Staff is wrong), it doesn't matter. Section 229.100 might, independently, require that ATXI obtain an assent from the counties, but such an assent (or franchise) is not the kind of franchise referred to in subsection 2 of section 393.170. Why?

Because the PSC Law tells us so. Section 393.010 provides as follows:

Any corporation formed under or subject to chapter 351 or heretofore organized under the laws of Missouri for the purpose of *supplying any town, city or village with gas, electricity or water* shall have full power to manufacture and sell and to furnish such quantities of gas, electricity or water as may be required by the city, town or village, district or neighborhood where located for public or private buildings or for other purposes, *and such corporations shall have the power to lay conductors for conveying gas, electricity or water through the streets, alleys and squares of any city, town or village with the consent of the municipal authorities thereof under such reasonable regulations as such authorities may prescribe, and such companies are authorized to set their poles, piers, abutments, wires and other fixtures along, across or under any of the public roads, streets and waters of this state in such manner as not to incommode the public in the use of such roads, streets and waters* (emphasis added).

It is clear that the statute only applies to a utility that is supplying service to the residents of a city/town/village (where the *quid pro quo* noted earlier exists). Moreover, the statute clearly allows use of roads outside the subject city/town/village *as needed* to provide that service (e.g., to serve Jefferson City, Ameren Missouri may need to run facilities outside the city limits).

Case law is clear¹² that section 393.010 must be construed together with section 71.250, which provides as follows:

Any city, town or village in this state may by ordinance authorize any person, or any company organized for the purpose of *supplying light, heat, power, water, gas or sewage disposal facilities*, and incorporated under the laws of this state, to set and maintain its poles, piers, abutments, wires and other fixtures, and to excavate for, install, and maintain water mains, sewage disposal lines, and necessary

¹² See, e.g., *Holland Realty & Power Co. v. St. Louis*, 282 Mo. 180, 221 S.W. 51, 189 (1920) (Addressing Mo. Rev. Stat. § 3367 (1909). Mo. Rev. Stat. § 9947 (1909), which are the predecessors to sections 393.010 and 71.520, respectively, and stating that “The two sections are cognate and should be construed together . . .”). The same thing has been said of sections 393.010 and 71.520 in substantially their current form, see, e.g., *Mo. Utilities Co.*, 475 S.W.2d at 31).

equipment for the operation and maintenance of electric light plants, heating plants, power plants, waterworks plants, gas plants and sewage disposal plants, and to maintain and operate the same along, across or under any of the public roads, streets, alleys, or public places within such city, town, or village, for a period of twenty years or less, subject to such rules, regulations and conditions as shall be expressed in such ordinance (emphasis added).

Section 393.010, (according to the cases¹³) gives the utility with the franchise the right to use the streets as long as the use does not “incommode” the public’s use of them. These cases make clear that if the city/town/village grants the franchise, it cannot just refuse to let the utility use the streets, and it can’t restrict that use except as needed to prevent interference with use of the streets as streets. The point, however, is that the use of the streets in a city, town or village contemplates – *always* – a city/town/village franchise which in turn means that it is being granted so that “light, heat, power” [utility service] can be *supplied to the residents in that area*. And the further point is that it is clear that section 71.520 “franchises” have nothing to do with a transmission line from point A to point B where there is no service to a city/town/village; no city/town/village franchise.

What this means is that when the PSC Law uses the term “franchise” (including in subsection 2 of section 393.170), it is referring only to required permissions from municipal authorities *when the permission is being given in exchange for the obligation to serve* municipal residents/businesses. That is not the case here.

We would note that in the *only* two cases ever decided by this Commission involving transmission-only companies who do not provide electric service to customers but instead provide transmission service to entities that do (just like ATXI, in cases where line certificates were sought by those companies, as is the case here), the Commission imposed no conditions

¹³ See, e.g., *Mo. Utilities Co.*, 475 S.W.2d at 30.

regarding county assents or any other kind of franchise on the grant of the CCN, despite the fact that those lines crossed county roads. This was true in a case involving a 161 kV transmission line constructed in Northeast Missouri by I.E.S. Utilities. *See Order Granting Certificate of Convenience and Necessity, Granting Variances from Certain Commission Rules, and Authorizing Sale of Assets, I.E.S. Utilities, Case No. EA-2007-0485 (Sept. 7, 2007)*. It was also true for a 345 kV transmission line (similar in purpose to the MVP line at issue here, but approved through SPP's regional transmission planning process) constructed by Transource Missouri, LLC. *See In re: Transource Missouri, Case No. EA-2013-0098 (Sept. 6, 2013)*.

For these reasons, which we will elaborate on further in our post-hearing briefing, the Commission can and should promptly decide this case on the merits once briefing is completed, and should “grant” the CCN, subject only to the six conditions discussed earlier, but without Mr. Beck’s condition 2 or any other condition relating to assents under section 229.100. As Ms. Borkowski outlines in her surrebuttal testimony, ATXI intends to request assents from the five counties (despite a significant question about whether they are actually required¹⁴), but that process should remain independent of the permission sought in this case. ATXI has no objection to providing the Commission with informational evidence that assents were later obtained (or that they were not required), but doing so should not be a condition on any permission the Commission grants in this case.

¹⁴ There will be absolutely no structures or other facilities of any kind actually placed in any public right-of-way. Consequently, ATXI questions whether the requirement in section 229.100 to obtain assent when poles are erected on a public road, or when conductors are laid applies at all. No pole will be erected on a public road, and no conductor will be laid. Instead, poles will be installed on private easements and the conductor will simply be suspended far above the road.

WHEREFORE, ATXI respectfully submits its statements of position.

Respectfully submitted,

/s/ James B. Lowery _____

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Statements of Position has been e-mailed, this 20th day of January, 2016, to counsel for all parties of record.

/s/ James B. Lowery _____

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

EXHIBIT A

Condition 3

Throughout the right-of-way acquisition process, ATXI will use all reasonable efforts to abide by the depicted route on each of the 377 parcels identified as of the filing of its application as parcels over which an easement will be required, but will be allowed to deviate from the depicted route within one of the 377 parcels in two scenarios.

First, if surveys or testing do not necessitate a deviation, ATXI may deviate from the depicted route on a particular parcel if ATXI and the landowner agree, e.g, upon request of the landowner and ATXI's agreement with the request.

Second, if ATXI determines that surveys or testing require a deviation, ATXI will negotiate in good faith with the affected landowner and if agreement can be reached, ATXI may deviate from the depicted route on that parcel, as agreed with the affected landowner.

With respect to any parcel other than the 377 identified parcels where ATXI determines that testing or surveys necessitate acquisition of an easement on that parcel, ATXI will negotiate in good faith with the landowner of the affected parcel over which ATXI has determined an easement is needed and, if agreement is reached, may deviate from the depicted route by locating the line on the affected parcel but will notify the Commission of the deviation and parcels affected prior to construction on that parcel. If agreement is not reached, despite good faith negotiations, ATXI will file a request with the Commission to allow it to deviate from the depicted route onto the affected parcel and shall, concurrently with the filing of its request with the Commission, send a copy of its request to the owner(s) of record of the affected parcel via

U.S. Mail, postage prepaid, as shown by the County Assessor's records in the county where the affected parcel is located, or at such other address that has been provided to ATXI by the owner(s). ATXI shall fully explain in that request why ATXI determined the change in route is needed and file supporting testimony with its request and the name(s) and addresses of the owner(s) to whom it provided a copy of its request. After Commission notice of the opportunity for a hearing on the issue of whether the change in route should be approved given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.

Condition 5

Prior to the commencement of construction on a parcel, ATXI will secure an easement which will include a surveyed legal description showing the precise dimension, including the length and width, for the permanent transmission line easement area for each affected parcel.

In addition, ATXI will track each easement grant by way of a spreadsheet that identifies each parcel by Grantor and County, and which contains the recording information for each parcel. Upon securing all necessary easements for the project, ATXI will file a copy of the spreadsheet with the Commission, to which a map will be attached. For each parcel, the map and the spreadsheet will include a unique indicator that allows the Commission to see where on the map that parcel is located.

ATXI's Proposed Standards and Procedures for Construction, Repair and Maintenance of Right-of-Way Mark Twain Project - Schedule DBR-SR2

Applicability

The following standards and procedures apply to construction, maintenance and repair activities occurring partially or wholly on privately owned agricultural land affected by the activities of Ameren Transmission Company of Illinois ("ATXI") as part of the Mark Twain Project ("Project"). They do not apply to such activities occurring on highway or railroad right-of-way or on other publicly owned land. ATXI will, however, adhere to the standards relating to the repair of drainage tile (identified below) regardless of where drainage tile is encountered. To the extent the standards and procedures conflict with an easement or other right-of-way agreement as between ATXI and the landowner, the language in the easement or other agreement shall govern.

All standards and procedures are subject to modification through negotiation by landowners and a designated representative of ATXI, provided such changes are negotiated in advance of any construction, maintenance or repairs.

ATXI will implement the standards and procedures to the extent that they do not conflict with the requirements of any applicable federal, state, or local rules, regulations, or other permits that apply to the Project. If any standard or procedure is held to be unenforceable, no other provision shall be affected by the holding, and the remaining standards and procedures shall remain in effect.

Right-of-Way Acquisition

Every landowner from whom ATXI requires an easement or other right-of-way agreement will be contacted personally, and ATXI will negotiate with each such landowner in good faith on the terms and conditions of the easement or agreement, its location, and compensation therefor. For easements, landowners will be shown a specific, surveyed location for the easement and be provided ATXI's standard template.

ATXI's right-of-way acquisition policies and practices will not change regardless of whether ATXI does or does not yet possess a Certificate of Convenience and Necessity from the Commission.

Construction and Clearing

Prior to construction, ATXI will notify all landowners in writing of the name and telephone number of ATXI's designated representative so that they may contact the designated representative with questions or concerns before, during, or after construction, including, but not limited to concerns over inferior work being performed on the landowner's property. Such notice will also advise the landowners of the expected start and end dates of construction on their properties. Landowners will be contacted in person, by phone and/or in writing at least 24 hours prior to the beginning of construction and provided a name and phone number of an Ameren Services real estate employee or contractor to contact if they have any questions or concerns. Following construction, landowners will be contacted to settle crop, land restoration, or other damages.

1. Prior to construction, ATXI's designated representative will personally contact each landowner (or at least one owner of any parcel with multiple owners) to discuss access to the right-of-way on their parcel and any special concerns or requests about which the landowner desires to make ATXI aware.

2. During construction, and through the completion of clean-up of the right-of-way, ATXI's designated representative will be on-site, meaning at or in the vicinity of the route, or on-call, to respond to landowner questions or concerns.

3. If trees are to be removed from privately owned land, ATXI or their representative will consult with the landowner to see if there are trees of commercial or other value to the landowner. If there are trees of commercial or other value to the landowner, ATXI will allow the landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to commencement of land clearing, such negotiation to include a reasonable period of time in advance of construction for landowner to harvest any timber the landowner desires to harvest and sell. If requested by the landowner, ATXI will cut logs 12" in diameter or more into 10 to 20 foot lengths and stack them along the edge of the right-of-way for handling by the landowner. ATXI's intent is to mulch or windrow trees and brush of no value on site; however, it will follow the landowner's desires, if reasonable, regarding the disposition of trees and brush of no value to the landowner by windrowing, burial, chipping or complete removal of affected property.

4. Stumps will be cut as close to the ground as practical, but in any event will be left no more than 4" above grade as terrain allows.

5. Unless otherwise directed by the landowner, stumps will be treated to prevent regrowth.

6. Unless the landowner specifically states that he does not want the area seeded, disturbed areas in non-crop producing land will be restored using a native plant mix consisting of native grasses and forbs. Deep-rooted native species will be used based on their abilities to enhance wildlife, soil permeability, pollutant filtering, and their reduced needs for fertilizer, herbicides, irrigation, and mowing. In addition, the native grasses and forbs will be selected for the region and site conditions. Before seeding the disturbed areas will be prepared to allow for good seed to soil contact to promote seed-germination and early growth. The native seed mix will be applied with any needed soil amenities and a cover crop consisting of oats or winter wheat depending on the time of year the seed is applied. The seeded area will be covered to protect the seed from being dislodged by storm events or erosion. Seeding cover may include crimped straw, erosion blanket, spray on erosion control products, or other methods depending on slopes or existing erosion conditions. Final restoration activities will be considered achieved when 70% or greater of the restored area has established permanent (not cover crop) vegetation with no large barren areas.

7. Best management practices will be followed to minimize erosion, with the particular practice employed at given location depending upon terrain, soil, and other relevant factors.

8. Gates will be securely closed after use.

9. Should ATXI damage a gate, ATXI will repair that damage.

10. If ATXI installs a new gate, ATXI will either remove it after construction and repair the fence to its pre-construction condition, or will maintain the gate so that it is secure against the escape of livestock.

11. ATXI will utilize design techniques intended to minimize corona.

12. Should a landowner experience radio or tv interference issues believed by the landowner to be attributed to ATXI's line, ATXI will work with the landowner in good faith to identify if ATXI is the root cause of the problem, and if so to attempt to resolve the issue.

13. If tiling is practiced in the area where a transmission line is to be constructed, ATXI will send a letter to all landowners to request information as to whether support structure locations will interfere with any drainage tile.

If ATXI is advised of possible drainage tile interference with a support structure location, then ATXI will conduct an engineering evaluation to determine if the support structure can be relocated to avoid interference with the tile. ATXI will make its best efforts to relocate the support structure if the engineering integrity of the electric transmission line can be maintained.

If the tile is intercepted and needs to be relocated, ATXI shall negotiate a relocation agreement with landowner. In no case shall the length of the rerouted tile exceed 125% of the length of original tile line that will be replaced.

If the tile line is intercepted and repair is necessary, such repair shall be performed in accordance with local requirements (if any), and if no requirements are available, ATXI shall reference the USDA Natural Resources conservation Service Conservation Practice Standard document, "SUBSURFACE DRAIN"- CODE 606, to aid in the repair of the damaged tile.

14. ATXI will make every reasonable effort to repair, replace, or pay to repair or replace damaged private property within 45 calendar days, weather and landowner permitting, after the transmission line has been constructed across the affected property. If the landowner is paid for any work that is needed to correct damage to his/her property, ATXI will pay the ongoing commercial rate for such work. After construction is completed, ATXI will make reasonable efforts to contact each landowner personally to ensure construction and clean-up was done properly, to discuss any concerns, and to settle any damages that may have occurred. ATXI will restore all disturbed slopes and terraces to their original condition following construction.

15. In order to minimize the impact of soil compaction and rutting, ATXI, unless the landowner opts to do the restoration work, will deep rip to a depth of 18 inches all cropland, which has been traversed by construction equipment, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip to a depth of 12 inches all pasture and hayland that has been traversed by construction equipment to alleviate compaction impacts, unless the landowner specifies other arrangements that are acceptable to ATXI.

ATXI will deep rip or pay to have deep ripped all compacted and rutted soil, weather and landowner permitting, after the transmission line has been constructed across any affected property.

16. If desired by the landowner, ATXI will agree to apply fertilizer and lime to land disturbed by construction, weather permitting, within a mutually agreed time frame following the completion of final construction to help restore the fertility of disturbed soils and enhance the establishment of a vegetative cover to control soil erosion.

17. ATXI will remove from the landowner's property all material that was not there before construction commenced and which is not an integral part of the transmission line. (Note: Such material to be removed would also include litter generated by the construction crews).

18. ATXI will work with landowners to prevent or correct excessive erosion on all lands disturbed by construction. ATXI will use all reasonable efforts to ensure that erosion control measures are implemented, or pay the landowner to do so, within 45 days, weather and landowner permitting, following the construction of the transmission line across any affected property subject to erosion.

19. Excess soil material will be generated from the area displaced by the foundation for the support structures. ATXI will remove the excess soil material in tillable and pasture lands.

20. All ATXI contractors will be required to carry and maintain a minimum of one million dollars of liability insurance available to respond to damage claims of landowners. All contractors will be required to respond to any landowner damage claims within 24 hours. All contractors will be required to have all licenses required by state, federal, or local law.

Maintenance and Repair

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, ATXI will make reasonable efforts to contact landowners prior to entry onto the right-of-way on their property to advise the landowners of ATXI's presence, particularly if access is near their residence.

2. ATXI will remain liable to correct damages to private property beyond the construction of the transmission line, to associated future construction, maintenance, and repairs as well.

3. All right-of-way vegetation management line clearance contractors will employ a general foreman who is a certified arborist.

4. If herbicides are used, only herbicides registered with EPA and any applicable state authorities will be used, and herbicides will be used in strict compliance with all labeling directions.

5. To the extent maintenance outage availability permits, routine maintenance will not be planned during wet conditions so as to minimize rutting.

6. Existing access roads will be used to access the right-of-way wherever available.

7. Prior to commencing any scheduled vegetation management on the right-of-way, ATXI or an ATXI representative, upon request, will meet personally with all landowners who wish to discuss ATXI's vegetation management program and plans for their property

and to determine if the landowner does or does not want herbicides used on their property. If the landowner does not want herbicides used, they will not be used.

Indemnity

ATXI will indemnify all owners of agricultural land upon which such transmission line is installed, their heirs, successors, legal representatives, and assigns from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from or arising out of the construction, maintenance, removal, repair, and use of such transmission line, whether heretofore or hereafter installed, including damage to such transmission line or any of its appurtenances, to the extent such claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or willful misconduct of ATXI, its employees, agents or contractors.