

In the Matter of the Application of Ameren
Transmission Company of Illinois for a
Certificate of Convenience and Necessity to
Construct, Install, Own, Operate, Maintain,
and Otherwise Control and Manage a 138 kV
Transmission Line and associated facilities
in Perry County, Missouri

$$\begin{pmatrix}) \\) \\) \\) \\) \\) \\) \end{pmatrix}$$

COMES NOW, the Office of the Public Counsel (the “OPC”) and offers its reply to Ameren Transmission Company of Illinois’ (“ATXI”) Response to the OPC’s Proposed Conditions (the “ATXI Response,” Doc. 21). In its Response, ATXI generally opposes both conditions the OPC recommended. The OPC continues to support the inclusion of its two proposed conditions, with a modification to its second condition, for the reasons discussed below.

In its Response to the Staff of the Public Service Commission of the State of Missouri’s (the “Staff” and “Commission,” respectively) Recommendation, the OPC requested that the Commission impose two conditions in addition to those recommended by Staff in its Recommendation, as modified by ATXI and Staff’s Joint Recommendation for Granting of Certificate of Convenience and Necessity (the “Joint Agreement”) or, alternatively, issue a procedural schedule. The OPC’s proposed conditions focused on the Landowner Letter¹ and the

1

Proposed Easement² that ATXI will present to landowners when it requests easements on their property. The OPC's proposed conditions are:

- (1) ATXI agrees to work with the OPC and Staff to include language in the notice letter³ sent to landowners when requesting an easement and in the Proposed Easement⁴ itself that identifies the full scope of the Grand Tower Project, specifically that it will be originally constructed as a 138 kV circuit with the potential to upgrade to a 345 kV circuit in the future.
- (2) ATXI agrees to remove the following language from its Proposed Easement: "together with the authority to extend to any other party the right to use, pursuant to the provisions hereof."

ATXI responded to the OPC, generally opposing both of the OPC's proposed conditions. The OPC will reply to ATXI's arguments regarding each condition in turn.

II. Proposed Condition 1

For its first condition, the OPC requested that the Commission require ATXI to work with the OPC and Staff to include language identifying the full scope of the Grand Tower Project in the Landowner Letter and in the Proposed Easement itself. In response, ATXI argues that the Landowner Letter already includes language identifying ATXI's ability to upgrade the transmission line in the future. (ATXI Resp. 3-4). ATXI also makes several arguments against including the language in the Proposed Easement, most of which center around its position that

² The Proposed Easement included as Schedule JS-02 to Ms. Spurlock's Direct Testimony is attached to this Reply as Attachment B for reference.

³ For clarity, the OPC refers to the Landowner Letter when referring to the notice letter.

⁴ The OPC is aware that landowners may negotiate what is included in the language of the easement. Therefore, it limits its request to changes to the Proposed Easement that ATXI will initially propose to the landowners.

including the language in the Proposed Easement would be overly restrictive and unnecessary. (*Id.* 4-9).

The Grand Tower Project is unique in that ATXI admits that it intends to install larger structures than are necessary to support the line it will construct. (Paulek Direct Test. 28, Doc. 3). Specifically, ATXI states that it will install a 138 kV line, but it will build structures that would support a 345 kV line. (*See id.*). It admits in response to the OPC's Data Request 22 that "[t]here is no timeframe for when this line [the 345 kV line] will be needed." (ATXI Resp. to OPC DR 22). It further admits that building the structures to carry the higher voltage requires different structures,⁵ greater costs,⁶ and additional easement area.⁷ (ATXI Resp. to OPC DR 23). The unique nature of this project requires ATXI to be as clear as possible with landowners when negotiating easements on their property.⁸

The OPC does not dispute that the Landowner Letter that ATXI provided in response to the OPC's DR 55 states that the project "ha[s] the ability to house a potential 345 kV transmission line in the future." (Landowner Letter 1). The OPC's concern arises from how ATXI has chosen to incorporate this language in the Landowner Letter. This short phrase is the only reference in the Landowner Letter to ATXI's ability to upgrade the line in the future. (*See id.*). It is buried in the middle of a paragraph in a letter that is approximately 2 pages long (or front and back of a

⁵ Specifically, ATXI states that if it constructed the line as a 138 kV transmission line, it "would seek to change structure types [for 10 structures] from steel pole on foundations to direct embedded steel h-frame." (ATXI Resp. to OPC DR 23a). For the river crossing, which represents "approximately 80% of the project cost," ATXI states that it "would switch from a double circuit vertical lattice tower to a single circuit horizontal tubular tower." (*Id.*).

⁶ ATXI states that cost savings associated with a smaller river crossing would be approximately 10-15%. (ATXI Resp. to OPC DR 23a). It identifies cost savings of approximately \$2.5 million per mile for the non-river crossing portion of the project. (*Id.*).

⁷ ATXI states that if it constructed the line as a 138 kV line, it would reduce the easement width from "150ft to 100ft, excluding the river crossing." (ATXI Resp. to OPC DR 23c).

⁸ The OPC believes that ATXI should always be clear when negotiating with landowners, but because this easement will essentially allow at least two projects on the landowners' property, it is especially important here.

single page) when using what appears to be 10-point font. (*See id.*). It includes only 14 words. (*See id.*). The Landowner Letter itself, however, is approximately 1,000 words long. (*See id.*). A landowner could easily miss this language.⁹

The OPC's proposed condition also requests that ATXI include language regarding the size of the project in the Proposed Easement. The easement itself, not the Landowner Letter, is the legal document that gives ATXI the ability to install its transmission line on the landowners' property. *See Hinshaw v. M-C-M Props., LLC*, 450 S.W.3d 823, 827 (Mo. Ct. App. 2014) ("When interpreting easements, the intention of the grantor must be ascertained from the instrument itself. Only when the language is unclear and ambiguous may we resort to rules of construction and consider extrinsic evidence." (internal quotation marks and citations omitted)). As currently drafted, the Proposed Easement includes no reference to the fact that a 138 kV line will be installed initially or the fact that ATXI will already hold the right to install the larger 345 kV line in the future should the Commission approve its request to do so. (*See Proposed Easement*). Rather, the Proposed Easement simply states that the landowner grants to ATXI "a perpetual easement" with certain rights, including

to survey, stake, construct, reconstruct, replace, use, operate, maintain, patrol, inspect, protect, repair, relocate, modify, add to the number of and remove an electric and communication line or lines consisting of towers, poles, crossarms, guys, anchors, wires, cables, conduits, fixtures, foundations, footings and other appurtenances thereto (hereinafter individually or collectively "Facilities")

(*Id.*). This broad grant of power may lead to future confusion as well as disputes when landowners receive notice of ATXI's request to upgrade the line without accompanying easement

⁹ ATXI argues that this is not the only time that it has informed landowners of the potential to upgrade the line once it has been constructed. (ATXI Resp. 4 n.4). It references the public meetings it held, the Commission's local public hearing, and the project's website. (*Id.*). However, ATXI provides nothing to show that all affected landowners were informed through one of these avenues. ATXI has also identified no drawback to including additional and clearer language in the Landowner Letter.

negotiations.¹⁰ By including language that references the voltage of the line, landowners will be aware of the full scope of the project that will be installed on their properties at the time they negotiate the initial easement.¹¹

The OPC does not oppose ATXI's proposal to construct the Grand Tower project using structures that are capable of supporting a 345 kV line in the future. However, as the representative of the public, the OPC is concerned about the landowners affected by this project. The OPC is especially concerned that because landowners may not be aware of the full scope of the project, they will not be fairly compensated for the taking of their property. In proposing its condition 1, the OPC requests the Commission require ATXI to work with the OPC and Staff to craft language to be included in the Landowner Letter and in the Proposed Easement that clearly alerts landowners to the fact that the easements will essentially allow two projects: (1) the 138 kV line and (2) the

¹⁰ In the ATXI Response, ATXI mentions that it "believes that the expansion of the line to a 345-kV line will itself require it to file a new application for a CCN with the Commission to obtain approval for the expansion to the 345-kV transmission line." (ATXI Resp. 5 n.6). Without clear language informing landowners of the possible expansion of the line in the future and the lack of any payment to them for that expansion, the OPC is concerned about landowner confusion. This confusion is likely as customers will presumably receive notice of the new case filed before the Commission (for expansion of the line to 345 kV), without ATXI contacting them to negotiate a new easement (which they will experience during the construction of the 138 kV line). See 20 CSR 4240-20.045(6)(K)1 (identifying notice requirements for landowners affected by electric transmission lines).

¹¹ ATXI argues in its Response that including language in the Proposed Easement that identifies the voltage of the line will "essentially eliminate[] the permanent nature of the easement by preventing a future use consistent with the purpose for which the easement was acquired." (ATXI Resp. 7). ATXI further argues that inclusion of the language results in the easement becoming "a temporary and overly restrictive grant of rights." (*Id.*). In making this argument ATXI appears to believe that if the easement references the 138 kV and 345 kV voltages, ATXI could not utilize the easement to expand the line beyond the 345 kV voltage level in the future, should it become necessary to do so. (See *id.* 6-7).

Initially, ATXI has not identified anything to show the potential for this section of line to expand beyond the possible 345 kV voltage. In fact, ATXI has not identified a timeframe for when the line would need to expand from the initial 138 kV voltage to the 345 kV voltage. (ATXI Resp. to OPC DR 22 (stating "[t]here is no timeframe for when this line [the 345 kV line] will be needed.")). Therefore, ATXI's concern appears to be overstated.

Further, this argument takes a narrow view of the potential language that could be included in the Proposed Easement. The OPC's proposed condition simply requests that ATXI work with the OPC and Staff to draft language that would make landowners aware of the full scope of the current project. The OPC believes language exists that would identify the full scope of the Grand Tower project (both the initial 138 kV line and the potential for the 345 kV line in the future) while also leaving open the possibility for ATXI to further expand the line in the future, should the need exist.

potential 345 kV line in the future. Knowledge of this fact will assist landowners in advocating for fair compensation for the easements on their property.¹² It may also reduce landowner resistance in the future, as they will be aware that ATXI has the easement width necessary to install the 345 kV line should it become necessary.¹³ For these reasons, the OPC continues to advocate for its proposed condition 1.

III. Proposed Condition 2

In its proposed condition 2, the OPC requested the Commission require ATXI to remove language from the Proposed Easement relating to ATXI's ability to contract with third parties to use the easement. (OPC Resp. 4-7). The OPC's concern as explained in its initial Response was that ATXI attempted to circumvent the expanded use statute, § 523.283 RSMo., by allowing third parties to install their own infrastructure on ATXI's easement without the third party obtaining its own easement from the landowner. (*See id.*). The OPC's concern rested on ATXI's response to two of the OPC's data requests. (*See id.* (referring to ATXI's Initial Resps. to OPC DRs 46 & 47)). ATXI has subsequently supplemented its responses to these data requests to clarify that it believes third parties must obtain their own easements from the landowner prior to using ATXI's easements. (*See* ATXI Supplemental Resps. to OPC DRs 46 & 47).¹⁴ However, the OPC remains concerned with the inclusion of the language in the Proposed Easement as it is referenced only in the Proposed Easement itself. Landowners are not alerted to this additional legal right in the

¹² ATXI argues that the amount of compensation a landowner will receive whether it is "the result of an agreement reached during negotiations or an award by a court based on evidence in a condemnation proceeding" will both be "based upon knowledge of the proposed future use of the easement." (ATXI Resp. 8-9). This is the reason behind the OPC's proposed condition 1. The OPC is simply trying to ensure that landowners recognize the full scope of this unique project before they begin negotiations.

¹³ Though ATXI relies on the fact that the width of the easement restricts the size of the line that can be installed on the easement, it points to nothing to show that landowners know of this restriction.

¹⁴ ATXI attached its supplemental responses to OPC DRs 46 and 47 to its Response. (*See* ATXI Resp. Exs. A & B). The OPC attaches ATXI's second supplemental response to OPC DR 46 to this Reply as Attachment C.

Landowner Letter. (*See* Landowner Letter). Therefore, the OPC requests that the Commission either impose the condition as originally proposed by the OPC that requires ATXI to remove the language from the Proposed Easement or impose a condition that requires ATXI to work with the OPC and the Staff to include language in the Landowner Letter that clearly and conspicuously identifies this additional right.

Initially, it cannot be disputed that the right to allow third parties to use the easement is a separate legal right. In its Response, ATXI asserts that the “[t]he purpose of the easement is clear—to allow for the construction and operation of an electric transmission line and, as ATXI clarifies here, associated communication lines necessary to operate the transmission system.”¹⁵ (ATXI Resp. 6). However, the plain language of the Proposed Easement shows that it provides more rights than those identified by ATXI in its Response. In its first paragraph the Proposed Easement includes language that the grantor (the landowner) grants to ATXI “a perpetual easement [for the transmission line] . . . together with the authority to extend to any other party the right to use, pursuant to the provisions hereof” (Proposed Easement 1). ATXI’s answers to the OPC’s data requests as well as ATXI’s Response show that ATXI clearly believes this language grants it a separate right to share its easement with third parties. Specifically, ATXI initially stated that this language “authorizes the possibility of ATXI to share its assets in the easement with third parties” and that, once it had ATXI’s permission, a third-party entity need not obtain its own easement from the landowner to install its facilities on ATXI’s easements. (ATXI Initial Resp. to OPC DRs 46 & 47). In its first supplemental answer to OPC DR 46, ATXI stated that this “provision would authorize ATXI to share its assets in the easement-not the easement itself-with third parties.”¹⁶

¹⁵ The OPC takes no position on the inclusion of language referencing a communication line in the Proposed Easement.

¹⁶ ATXI also supplemented its answer to the OPC’s DR 47, in part clarifying that it “understands that the language allows it to license the use of its facilities to third parties, but it does not allow these third parties to utilize ATXI’s

(ATXI Supplemental Resp. to OPC DR 46). ATXI also clarified that it “requires that any third party wishing to use ATXI facilities obtain the necessary consent of any landowner on which the ATXI assets are located as a condition precedent to any agreement with ATXI.” (*Id.*). It provided a copy of its “standard Master Facilities License Agreement”¹⁷ in support of its position. (*Id.*). In its Response, ATXI also includes a footnote saying that without this language it “questions whether it could allow a third party to place something like fiber optic on its transmission lines even after the third party successfully negotiated for that right from the landowner.” (ATXI Resp. 12 n.16). It also recognizes that one of the areas of negotiation involving the Proposed Easement with landowners “involves the terms regarding third-party rights.” (*Id.* 13).

Clearly, ATXI sees the ability to allow third-parties to use its easement as a right separate from the right to “construct[] and operat[e] . . . an electric transmission line and . . . associated communication lines necessary to operate the transmission system.” (ATXI Resp. 6). Yet this right is never mentioned in the Landowner Letter provided by ATXI. (*See* Landowner Letter). Rather, it is only identified in the Proposed Easement itself, where it is buried in the middle of a lengthy paragraph.¹⁸ A landowner could easily miss the language creating this valuable right.¹⁹

easement to use those facilities without that third party obtaining prior consent from the landowner.” (ATXI Supplemental Resp. to OPC DR 47).

¹⁷ The OPC notes that per the terms of the Master Facilities License Agreement (the “MFLA”) provided by ATXI the MFLA applies only to Union Electric Company d/b/a Ameren Missouri and does not apply to transmission facilities, which it defines as “electric supply lines and support structures operated at, or above, 100 kilovolts (kV).” (ATXI Supplemental Resp. to OPC DR 46, Attachment “Master Facilities License Agreement” (included in Ex. A of ATXI’s Resp.)). However, ATXI clarified in its second supplemental response to OPC DR 46 that this is a “standard agreement, which is used as a template.” (ATXI 2nd Supplemental Resp. to OPC DR 46 (emphasis in original)). It maintains that this template “is used to create similar agreements for ATXI.” (*Id.*). The OPC presumes that when modified for ATXI the MFLA applies to ATXI and transmission lines such as the Grand Tower project.

¹⁸ The first paragraph of the Proposed Easement consists of one sentence that is 19 single-spaced lines long and contains at least 286 words. (*See* Proposed Easement 1).

¹⁹ The Master Facilities License Agreement provided by ATXI includes a “License Fee Addendum” that appears to identify the fees that a third-party must pay if it wishes to utilize space on the poles. (Master Facilities License Agreement, Ex. A).

Because ATXI requests this separate right but does not notify landowners of its existence, the OPC requests that the Commission include a condition on its grant of the CCN that either requires ATXI to remove the language from the Proposed Easement²⁰ or requires ATXI to work with the OPC and the Staff to include language in the Landowner Letter that clearly and conspicuously identifies this additional right.

IV. Conclusion

The OPC remains concerned that landowners will not understand the full scope of the easement ATXI requests for this unique project that will essentially allow for two separate projects and that will grant ATXI the valuable right to allow third parties to use ATXI's easement. The OPC proposes conditions that simply require ATXI to work with the OPC and Staff to include clear and conspicuous language in the Landowner Letter and in the Proposed Easement to ensure landowners have full knowledge of the scope of rights that ATXI requests. Alternatively, the OPC requests that the Commission order a Procedural Schedule in this matter.

WHEREFORE, the OPC respectfully requests that the Commission impose its suggested conditions—as modified in this Reply—in addition to those recommended by Staff, as modified by the Joint Agreement, or order a Procedural Schedule.

Respectfully submitted,

/s/ Lindsay VanGerpen
Lindsay VanGerpen (#71213)
Senior Counsel
Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lindsay.VanGerpen@opc.mo.gov

²⁰ ATXI recognizes that third-party access rights are a term that is often addressed when it negotiates with landowners. (ATXI Resp. 13; *see also* ATXI Resp. to OPC DR 41). Therefore, changes to this term seem unlikely to affect the overall project.

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing will be emailed to all counsel of record this 26th day of November 2025.

/s/ Lindsay VanGerpen