

**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 Response to Application for Rehearing,
Motion for Reconsideration, and Request for Clarification of
Ameren Transmission Company of Illinois**

COMES NOW Neighbors United Against Ameren’s Power Line (Neighbors United), by and through the undersigned counsel, and pursuant to the Commission’s May 27, 2016 *Order Directing Filing*, offers this Response to the Application for Rehearing, Motion for Reconsideration and Request for Clarification (Application) filed by ATXI. In support, Neighbors United states as follows:

Summary

1. ATXI offers only one new argument to the Commission—as discussed in paragraph 7 below—as to why the Commission’s April 27th *Report and Order* is unreasonable and/or unlawful with respect to the requirement of Section 229.100, RSMo. Otherwise ATXI’s arguments remain the same—that it should not be required to follow Missouri statutory law when planning and applying for a Certificate of Convenience and Necessity (CCN) for the Mark Twain Transmission Project (MTTP).

2. ATXI’s request for expediency should not override state law and the Commission should decline to grant rehearing to ATXI on the Commission’s finding that Section 229.100, RSMo applies in this case.

3. Further ATXI's request for reconsideration should also be denied as untimely and improper. Commission Rule 4 CSR 240-2.160 states the requirements for a motion for reconsideration. As discussed further below, the Commission's Order is not a procedural or interlocutory order, and if it was, ATXI failed to file the motion within ten (10) days of the date the Commission issued the Order. As such, the Commission should deny ATXI's request for reconsideration.

4. Finally, ATXI requests for the Commission to clarify its conditions to the CCN. Other than removing the duplicative Condition 8 in the Order, Neighbors United believes Conditions 3 and 7 of the Order are appropriate and offer protections to the landowners that they would not be afforded by ATXI otherwise. Neighbors United requests the Commission deny ATXI' request for clarification other than to delete the duplicative Condition 8.

Argument

Application for Rehearing

5. ATXI's Application offers 4 bulleted points and a passing mention of the Commerce Clause as to why the Commission's Order is unreasonable and/or unlawful. As to bullet points 1, 2, and 4, for brevity, Neighbors United will simply refer the Commission to its Initial Post-Hearing Brief,¹ Reply Brief,² Staff's Initial Post-Hearing Brief,³ Staff's Reply Brief,⁴ and the Office of Public Counsel's Opening Statement at the evidentiary hearing in this matter.⁵

¹ EFIS, Item No. 265

² EFIS, Item No: ~~271~~

³ EFIS, Item No: ~~263~~

⁴ EFIS, Item No. 269

⁵ EA-2015-0146, Tr. Vol 5., p. 60, ll. 24-25, p. 61, ll.1-2.

As the Commission found in its Order, “The Commission is loath to allow a utility a novel end run around a statutorily required county commission approval simply because the utility would not serve retail customers.”⁶ Further, Staff’s *Reply Post-Hearing Brief* provides:

ATXI’s attempt to create different franchises—one for areas and another for specific lines—has no basis in statute. Neither § 229.100 (counties), § 393.010 (cities, towns, villages and limited rural), nor § 71.520, RSMo. (cities, towns, and villages), sources of authority to give utilities permission to use public rights-of-way, draw such distinctions. As explained following, there is nothing in §393.170, RSMo., or caselaw which supports that the Missouri legislature intended such an illogical result. Regardless of ATXI’s perspective that local county control of the use of rural public roads and highways is bad public policy with regard to electric lines, through the general assembly, in §§ 229.100, § 393.010 and 393.170, RSMo., the people of the State of Missouri have established that to be the policy of this state.⁷

While it continues to be Neighbors United’s position that Section 229.100, RSMo county assent is a prerequisite to the Commission granting the CCN—verses granting the CCN conditionally—the Commission was correct in finding the statute’s applicability in this case. The Commission should deny ATXI’s Application for rehearing on Points 1, 2 and 4.

6. ATXI’s Point 3 argues that the Commission’s Order is unreasonable and/or unlawful because by following state law the Commission subordinates its statutory duty to the county commissioners in the five counties ATXI proposes to build the MTTP. ATXI relies on two cases for this proposition. However, these two cases are not applicable to this case in the way ATXI suggests. They actually support Neighbor United’s, Staff’s and OPC’s position that county assent is required.

⁶ *Report and Order*, p. 39.

⁷ EFIS, Item No. 269, *Staff’s Reply Post-Hearing Brief*, p. 3.

In *Union Electric Co. v. City of Crestwood*, 499 S.W.2d 480 (Mo. 1973), the City of Crestwood sought to eliminate rights granted to Union Electric in a franchise agreement and the city issued an ordinance prohibiting future aboveground construction and making it a misdemeanor to violate the ordinance. ATXI fails to acknowledge that in the two cases they cite, the Missouri Supreme Court notes that it has in a series of cases "...recognize[d] that a municipality may grant or refuse to grant permission to place utilities above or below its streets."⁸ The Court continued and stated that a municipality's "absolute right" to refuse or grant a franchise is pointed out in *St. Louis V. Public Serv. Com.*, 276 Mo. 509, 519-522, 207 S.W. 799 (1918).⁹ Because these cases cited by ATXI support the Commission's Order, the Commission should deny ATXI's Application for rehearing on Point 4.

7. And finally, ATXI's last argument is that the Commission's Order is unreasonable and/or unlawful in that it interferes with interstate commerce. Besides the bald allegation, ATXI's Application is unclear as to why there is a conflict. ATXI seems to suggest that anything short of approval of its application for a CCN violates interstate commerce, and because MISO approved the project, the Commission must also do so. The Commission should deny ATXI's Application for rehearing on this point.

ATXI's Motion for Reconsideration

8. ATXI requests that the Commission amend its Order as to not require the assents of all five county commissions before it can begin construction. The request is not only improper, it is untimely, and it goes against Rule 4 CSR 240-3.105(2).

⁸ *Union Electric Co. v. City of Crestwood*, 499 S.W.2d 480, 485 (Mo. 1973).

⁹ *Id.*, citing *St. Louis V. Public Serv. Com.*, 276 Mo. 509, 519-522, 207 S.W. 799 (1918).

9. Pursuant to Commission Rule 4 CSR 240-2.160(2), “Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission.” First, the Commission’s Order in this case is neither procedural nor interlocutory. Secondly, ATXI’s request was filed 29 days after the Commission issued its Order in this case. As such, the request is improper and untimely.

10. Rule 4 CSR 240-3.105(2) also applies to ATXI’s request. As the Commission found in its Conclusions of Law, “if any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.”¹⁰ ATXI’s motion would have the Commission order that it can provide the county assents piecemeal, in effect giving ATXI an effective CCN prior to it furnishing the Commission with all required approvals. The clear language of the Commission’s rule prohibits this. ATXI did not ask for 5 separate CCNs, but for one CCN granting it authority to build the entire MTTP over five counties. The Commission may not grant ATXI the authority it seeks until the required approvals from all five county commissions are obtained by ATXI and submitted to this Commission for consideration. Neighbors United requests the Commission deny ATXI’s Motion for Reconsideration.

Request for Clarification

11. Finally, ATXI requests the Commission change its ordered Condition 3 and Condition 7, delete Condition 8, add an condition regarding other government approvals, and add a Condition regarding annual reports.

¹⁰ *Report and Order*, p. 38, paragraph 24.

12. Neighbors United believes that Condition 3 should remain in the Order. As ATXI has yet to acquire all assents and government agency approvals necessary, certain plans and specifications filed with the original CCN Application may need to be amended. Condition 3 will require ATXI to file any amended plans and specifications based on newly obtained approvals, and the most up-to-date and correct information should be on file with the Commission. Condition 3 provides not only the landowners, but any interested member of the public, the correct information regarding ATXI's plans and specifications. ATXI should be required to update this information accordingly.

13. In regard to Condition 7, ATXI requests the Commission order the construction, clearing, maintenance, repair, and right-of-way practices set out in Doug Brown's surrebuttal testimony, verses those included in the rebuttal testimony of Dan Beck. ATXI argues that Mr. Brown's procedures for MTTP are the result of a collaborative effort, but to Neighbors United's knowledge, the only parties that collaborated on the procedures were Staff and ATXI.

14. Neighbors United's Statement of Position requested the Commission approve the conditions in Mr. Beck's testimony, as did the Office of Public Counsel at the evidentiary hearing.¹¹ Neighbors United asserted that no condition will completely alleviate the impacts this project will have on landowners, but if the Commission granted ATXI's application, Neighbors United asked that the conditions set forth in Mr. Beck's testimony be ordered to protect landowners interests to the greatest extent possible. Neighbors United's position remains the same and requests the Commission deny ATXI's motion to alter the procedures ordered by the Commission in Condition 7.

¹¹ EA-2015-0146, Tr. Vol. 5, p. 61, ll. 3-11.

15. Finally, ATXI's request to add a new condition 8 is similar to its request to allow the required consents to be filed piecemeal with the Commission, with the result of allowing its CCN to become effective without first filing all required approvals with the Commission. Commission Rule 4 CSR 240-3.105(1)(D)2. requires ATXI to provide certified copies of the required approvals of "other governmental agencies" prior to the Commission granting the authority sought. ATXI's proposed Condition 8 will violate the Commission's rule and the Commission should not amend its Order to include it.

WHEREFORE, Neighbors United submits this Response and respectfully requests the Commission deny the relief requested by ATXI's Application for Rehearing and Motion for Clarification, and deny ATXI' request for clarification other than to delete the duplicative Condition 8.

Respectfully submitted,

HERNANDEZ LAW FIRM, LLC

By: **/s/ Arturo A. Hernandez, III**

Arturo A. Hernandez, III

MO Bar No. 59684

1802 Sun Valley Drive

Jefferson City, Missouri 65109

Phone: 573-616-1486

Fax: 573-342-4962

E-Mail: art@hernandezlegal.com

ATTORNEY FOR NEIGHBORS
UNITED AGAINST AMEREN'S POWER
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 2nd day of June 2016.

/s/ Arturo A. Hernandez, III

Arturo A. Hernandez, III