

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 4<sup>th</sup> day of November, 2015.

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

Issue Date: November 4, 2015

Effective Date: November 14, 2015

**Background**

On May 29, 2015,<sup>1</sup> Ameren Transmission Company of Illinois (“ATXI”) filed an Application, seeking a certificate of convenience and necessity (“CCN”) authorizing it to construct and operate a new 345-kV electric transmission line approximately 95 miles in length from Palmyra, Missouri west to a new substation near Kirksville, Missouri, and north to a connection point on the Iowa border. On October 13, Neighbors United Against Ameren’s Power Line (“Neighbors United”) filed a Motion to Dismiss Application. Neighbors United’s motion argues that under Article 1, Section 35 of the Missouri Constitution, commonly referred to as the “Right to Farm Amendment,” the Commission is constitutionally prohibited from granting the relief requested by ATXI.<sup>2</sup> Further, Neighbors United argues that ATXI does not have the requisite county commission approval required under Section 229.100 RSMo and Commission Rule 4 CSR 240-3.105(1)(D)(1) to obtain the certificate of

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<sup>1</sup> Calendar references are to 2015.

<sup>2</sup> Motion to Dismiss, pp. 3-4 (filed October 13, 2015).

convenience and necessity it seeks, mandating dismissal of the Application.<sup>3</sup> For the reasons set forth below, both arguments are devoid of merit.

### **Standard**

A motion to dismiss is a test of the petition or application.<sup>4</sup> The petition or application must be liberally construed and all alleged facts are accepted as true.<sup>5</sup> The tribunal is not allowed to consider the validity of the applicant's allegations or to consider evidence outside the four corners of the application that might challenge their validity.<sup>6</sup> "If the petition [application] sets forth any sets of facts, that, if proven, would entitle the plaintiff [Applicant] to relief, then the petition [Application] states a claim."<sup>7</sup> Accordingly, when ruling on the pending motion, it is not appropriate for the Commission to consider any factual allegations, even if supported by affidavits, presented by Neighbors United in support of its motion.<sup>8</sup>

### **Right to Farm Amendment**

As a preliminary matter, Neighbors United contends "constitutional interpretation and application" of the Right to Farm Amendment is beyond the Commission's authority and, accordingly, the Commission must dismiss the Application.<sup>9</sup> It is undisputed that the Commission has no authority to rule on the constitutionality of a statute.<sup>10</sup> This is because the Commission is an administrative body of limited jurisdiction, having only the powers

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<sup>3</sup> *Id.* at 5.

<sup>4</sup> See, e.g., *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc. 1993)

<sup>5</sup> See *Hedrick v. Jay Wolfe Imports*, 404 S.W.3d 464, 467 (Mo.App. W.D. 2013)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* Contrast this with a motion for summary determination, for which parties may file testimony, discovery, and affidavits for and against the motion. See Commission Rule 4 CSR 240-2.117.

<sup>8</sup> In support of its argument, Neighbors United attached certified copies of resolutions from the five counties through which the proposed line would run as well as statements from property owners regarding the farming or ranching activities that take place on their property. For the reasons set forth above, the Commission cannot rely on this factual information to resolve the Motion to Dismiss.

<sup>9</sup> Motion to Dismiss, p. 3.

<sup>10</sup> See, e.g., *Duncan v. Missouri Bd. For Architects, Professional Engrs., & Land Surveyors*, 744 S.W.2d 524, 530-31 (Mo.App. 1988); *Fayne v. Department of Social Services*, 802 S.W.2d 565 (Mo.App. 1991).

expressly granted by statutes and reasonably incidental thereto.<sup>11</sup> However, constitutional issues must be raised at the first opportunity,<sup>12</sup> and the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction.<sup>13</sup>

In this case, Section 393.170.1 RSMo requires an “electrical corporation” to seek the “permission and approval of the Commission” prior to commencement of any “construction of . . . electric plant . . . .” Section 393.170.3 requires the Commission to “grant the permission and approval” only when it is “necessary or convenient for the public service.” Thus, ATXI must seek a certificate of convenience and necessity before constructing the proposed transmission line, and the Commission must interpret all relevant constitutional and statutory provisions in determining whether such transmission line is indeed necessary or convenient.

The Right to Farm Amendment provides that “the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state . . . .”<sup>14</sup> Neighbors United claims that ATXI “requests relief that would permanently remove citizens’ property from production and prevent these citizen farmers and ranchers from engaging in farming and/or ranching practices.”<sup>15</sup> Put another way, Neighbors United asserts that if the Commission were to grant ATXI the CCN to construct and operate this transmission line, such action would infringe on its members’ ability to engage in farming or ranching in violation of this constitutional provision.

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<sup>11</sup> See, e.g., *State ex. rel. City of St. Louis v. Missouri Public Service Comm’n*, 73 S.W.2d 393, 399 (Mo. banc. 1934); *State ex. rel. Kansas City Transit, Inc. v. Public Service Comm’n*, 406 S.W.2d 5, 8 (Mo. 1966).

<sup>12</sup> See *State ex. rel. MoGas Pipeline LLC v. PSC*, 395 S.W.3d 562, 568 (Mo.App. W.D. 2013).

<sup>13</sup> See, e.g., *Missouri Southern R. Co. v. PSC*, 214 S.W. 379, 380 (Mo. 1919).

<sup>14</sup> Mo. Const., Art. 1, § 35.

<sup>15</sup> Motion to Dismiss, p. 4.

This assertion fails to distinguish between the legal significance of granting a CCN based upon a determination that the proposed project is in the public interest and the taking of property through eminent domain proceedings. The former is within the purview of the Commission, while the latter is within the exclusive jurisdiction of Article III courts.<sup>16</sup> Accordingly, because the potential issuance of a CCN does not in and of itself deprive any member of Neighbors United from the ability to farm or ranch, this constitutional provision cannot provide the basis for dismissal of the Application.<sup>17</sup>

### **County Commission Assents**

Under Section 229.100 RSMo, “No person or persons, association, companies or corporations shall erect poles for the suspension of . . . power wires . . . across the public roads or highways of any county of this state without first having obtained the assent of the county commission of such county therefor . . . .”<sup>18</sup> Accordingly, Neighbors United asserts that ATXI must acquire the assent of county commissions in any county where the construction of the transmission line requires stringing power wires across public roads or highways.<sup>19</sup> Commission Rule 4 CSR 240-3.105(1)(D)(1) requires that specific evidence of such assent be provided to the Commission. Neighbors United argues that because such evidence has not been provided, and cannot be provided, dismissal of the Application is required.<sup>20</sup>

This argument ignores specific language in Section 393.170 that authorizes the Commission to impose any conditions on a CCN that it deems reasonable and necessary.<sup>21</sup>

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<sup>16</sup> Section 523.010, .262 RSMo.

<sup>17</sup> While the existence of the Right to Farm Amendment does not require dismissal of the Application, it could impact how the Commission interprets the public interest as part of the CCN approval process.

<sup>18</sup> Section 229.100 RSMo.

<sup>19</sup> Motion to Dismiss, p.5.

<sup>20</sup> *Id.*

<sup>21</sup> Section 393.170.3 RSMo.

If such County Commission assents are indeed required by Section 229.100, RSMo, the Commission can make the CCN conditioned upon the receipt of such assents and evidence thereof provided to the Commission. Correspondingly, the Commission's rules provide that when such assent is unavailable at the time of initial filing, it need only be furnished prior to the granting of the authority sought.<sup>22</sup> 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. Therefore, the existence or non-existence of such assents do not provide a basis for dismissal of the Application.

**THE COMMISSION ORDERS THAT:**

1. The Motion to Dismiss filed by Neighbors United is denied.
2. This order shall be effective on November 14, 2015.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, and Coleman, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

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<sup>22</sup> Commission Rule 4 CSR 240-3.105(D)(2).