

**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, )  
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. )

**File No. EA-2015-0146**

---

---

**REPORT AND ORDER**

---

---

**Issue Date:**

**April 27, 2016**

**Effective Date:**

**May 27, 2016**

**TABLE OF CONTENTS**

<b>Appearances .....</b>	<b>2</b>
<b>Procedural History .....</b>	<b>4</b>
<b>The Issues .....</b>	<b>4</b>
<b>Findings of Fact .....</b>	<b>6</b>
<b>Background .....</b>	<b>6</b>
<b>Certificate of convenience and necessity .....</b>	<b>8</b>
<b>Need .....</b>	<b>8</b>
<b>Qualifications .....</b>	<b>21</b>
<b>Financial ability .....</b>	<b>22</b>
<b>Economic feasibility .....</b>	<b>23</b>
<b>Public interest .....</b>	<b>24</b>
<b>County assents .....</b>	<b>31</b>
<b>Conditions .....</b>	<b>31</b>
<b>Conclusions of Law .....</b>	<b>31</b>
<b>Decision .....</b>	<b>36</b>
<b>Ordered Paragraphs.....</b>	<b>40</b>

**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, )  
Maintain and Otherwise Control and Manage a ) **File No. EA-2015-0146**  
345,000-volt Electric Transmission Line from Palmyra, )  
Missouri, to the Iowa Border and Associated Substation )  
Near Kirksville, Missouri. )

**REPORT AND ORDER**

**APPEARANCES**

**James B. Lowery, Michael R. Tripp, Esq.**, Smith Lewis, LLP, P.O. Box 918, Columbia, Missouri 65205-0918, for Ameren Transmission Company of Illinois.

**Jeffrey K. Rosencrants, Edward Fitzhenry, Eric Dearmont, Esq.**, Ameren Services Company, One Ameren Plaza, 1901 Chouteau Avenue, P.O. Box 66149 (MC 1310), St. Louis, Missouri, 63166-6149, for Ameren Transmission Company of Illinois.

**James Owen, Esq.**, Public Counsel, Office of the Public Counsel, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**Nathan Williams, Mark Johnson, Jamie Myers, Jacob Western, Hampton Williams, Esq.**, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**Sherrie A. Hall, Emily R. Perez, Esq.**, Hammond and Shinnars, P.C., 7730 Carondelet Avenue, Suite 200, St. Louis, Missouri 63105, for International Brotherhood of Electrical Workers Local Union 1439.

**Edward F. Downey, Esq.**, Bryan Cave, LLP, 221 Bolivar Street, Suite 101, Jefferson City, Missouri 65101, for Missouri Industrial Energy Consumers.

**Diana M. Vuylsteke, Esq.**, Bryan Cave, LLP, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102, for Missouri Industrial Energy Consumers.

**David C. Linton, Esq.**, 314 Romaine Spring View, Fenton, Missouri 63026, for United for Missouri, Inc.

**Jeffrey L. Small, Karl Zobrist, Joshua Harden, Jacqueline M. Whipple, Esq.**, Dentons US LLP, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for Midcontinent Independent System Operator, Inc.

**REGULATORY LAW JUDGE:** Ronald D. Pridgin, Deputy Chief

## **Procedural History**

On May 29, 2015, Ameren Transmission Company of Illinois (“ATXI”) applied to the Missouri Public Service Commission (“Commission”) for a certificate of convenience and necessity to build a transmission line and associated facilities in the counties of Schulyer, Adair, Knox, Shelby, and Marion, Missouri. In the alternative, ATXI asks the Commission to dismiss the application on the grounds that ATXI is not a public utility.<sup>1</sup>

The Commission received timely interventions requests from: Neighbors United Against Ameren’s Power Line (“Neighbors United”), United for Missouri (“UFM”), Midcontinent Independent System Operator (“MISO”), and IBEW Local Union 1439 (“Local 1439”). The Commission received no objection to those applications. Thus, the Commission granted intervention to those applicants. The Commission convened an evidentiary hearing on January 25-29, 2016, and received post-hearing briefs on March 4 and 18, 2016.

## **The Issues**

On January 15, 2016, the parties filed an Issues List. The issues the parties present to the Commission for resolution are:

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

---

<sup>1</sup> ATXI has apparently abandoned this argument, as this issue is not in the parties’ List of Issues, and ATXI did not argue the Commission lacked jurisdiction in its post-hearing briefs.

of convenience and necessity (“CCN”), is “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo?

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?

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

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence. Rather, it indicates that the omitted material was not dispositive of this decision.

## **Findings of Fact**

### **Background**

1. ATXI (formerly named Ameren Illinois Transmission Company) is an Illinois company dedicated to electric transmission infrastructure investment. ATXI presently is constructing approximately 375 miles of 345-kV transmission line that forms the Illinois Rivers Project, a line that runs from the Indiana border, across Illinois into Missouri.<sup>2</sup>

2. ATXI admits that it is engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use, and a part of such lines ATXI plans to construct, own, and operate will be located in Missouri.<sup>3</sup>

3. ATXI has dubbed the transmission line for which it seeks a certificate of convenience and necessity the Mark Twain Project (“Mark Twain”). It would consist of approximately 95 miles of new 345-kV electric transmission line, a 2.2-mile 161-kV connector line, a substation and related facilities. The proposed 345-kV transmission line will be routed from the new Maywood Switching Station near Palmyra, Missouri, through Marion, Shelby, Knox and Adair counties to the new Zachary Substation, located near Kirksville, Missouri, and then continuing north through Adair and Schuyler counties to the Iowa border. The 345-kV transmission line will primarily consist of single-shaft, self-supported steel poles, 90-130 feet in height, within a 150-foot right of way. Also, a new 2.2-mile 161-kV line will connect the Zachary Substation with the existing

---

<sup>2</sup> Ex. 1, p. 4.

<sup>3</sup> Application, ¶ 2 (filed May 29, 2015).

Adair Substation. These facilities will be constructed in a manner consistent with industry-wide standards. ATXI's expected total cost of Mark Twain along the route described above is approximately \$224 million.<sup>4</sup>

4. The breakdown of the estimated \$224 million cost is: two 345 kV lines at a cost of \$192.5 million; the Zachary substation, at a cost of \$27 million; a connector line between the Zachary and Adair substations, at a cost of \$2.6 million; and modifications at the Adair substation, at a cost of \$1.9 million.<sup>5</sup>

5. The Midcontinent Independent System Operation, Inc. ("MISO") is an independent, not-for-profit, and FERC-approved Regional Transmission Organization responsible for regional transmission planning, reliability assurance and managing competitive electricity markets across all or parts of 15 states, including Missouri, and the Canadian province of Manitoba. MISO's regional area of operations ("footprint") stretches from the Ohio-Indiana line in the east to eastern Montana in the west, and south to New Orleans.<sup>6</sup>

6. Mark Twain stems from a study conducted by MISO. In 2008, MISO began an extensive study of the regional electric transmission grid to identify transmission needs and develop a planning process to construct transmission projects to meet those needs. In 2011, MISO identified a "multi-value portfolio" ("MVP") of 17 transmission projects that would increase the overall reliability and efficiency of the regional transmission grid, meet public policy demands for renewable energy, and provide economic benefits in excess of the portfolio costs. Mark Twain consists of the

---

<sup>4</sup> Id. at 5.

<sup>5</sup> Ex. 3, pp. 10-11.

<sup>6</sup> Ex. 3, p. 6.



Missouri portion of two of those MVP projects, MVP #7 and nearly all of #8 included in the MISO Transmission Expansion Plan in accordance with MISO's FERC-approved tariff.<sup>7</sup>

7. The costs to construct and operate MVP projects such as Mark Twain are reflected in transmission charges to load-serving entities in MISO's footprint, which in turn reflect charges they collect in their retail revenue requirements. Missouri represents just under 8% of the load in MISO. This means that less than 8% of the transmission charges arising from the Project will be paid by Ameren Missouri and other wholesale load-serving entities in Missouri. The remainder will be paid for by other load-serving entities across the MISO footprint.<sup>8</sup>

8. MISO's stakeholders include state regulatory commissions, consumer advocates, transmission owners, independent power producers, and environmental intervenors. The vast differences in the interests of those stakeholders ensure that MISO's decision to build transmission is not biased towards simply building more transmission.<sup>9</sup>

#### Certificate of convenience and necessity criteria

##### Need

##### Renewable energy

9. The 17 projects that comprise the MVP portfolio were determined by MISO and the MISO Board of Directors to be necessary to facilitate the delivery of

---

<sup>7</sup> Ex. 1, pp. 5-6.

<sup>8</sup> Ex. 1, p. 6.

<sup>9</sup> Tr. Vol 9, pp. 603-05.

renewable energy, resolve numerous reliability issues, reduce transmission line losses and provide economic and efficiency benefits to customers throughout the MISO footprint. The portfolio is a “no regrets” portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.<sup>10</sup>

10. The benefits of Mark Twain are proven by multiple cost-benefit analyses. One such analysis was conducted by MISO as part of the MVP portfolio approval process, in which MISO evaluated the economics of the overall MVP portfolio under four scenarios. Those scenarios included two different “business as usual” cases (one with lower load growth and one using historical load growth), one scenario that assumed the continuation of current energy policies with the addition of some carbon limitations, and one scenario with even greater carbon-related regulation combined with the enactment of various new state and federal energy policies.<sup>11</sup>

11. The MVP portfolio is a group of transmission projects distributed across the MISO footprint that enables the reliable delivery of the requirements of state policies regarding renewable energy (oftentimes referred to as RPS or RES mandates).<sup>12</sup>

12. Mark Twain will help Missouri meet its renewable energy obligations, even if no additional wind generation is developed in the relevant portions of Missouri.<sup>13</sup>

13. Mark Twain will also provide an additional means by which electricity may be delivered into and from Missouri, particularly from areas rich in wind energy. This delivery potentially increases available wind energy resources for compliance with Missouri’s renewable energy standard and with the EPA’s clean power plan (“CPP”). It

---

<sup>10</sup> Tr. Vol. 5, p. 179, 194-95; Ex. 35, p. 16, 20, Sch. JTW-1.

<sup>11</sup> Ex. 35, Sch. JTW-1, p. 54.

<sup>12</sup> Ex. 35, p. 10.

<sup>13</sup> Id. at 12.

will also encourage the development of wind as an electricity resource in Missouri by increasing the availability of transmission capacity in areas where that resource is available.<sup>14</sup>

14. Presently, The Empire District Electric Company, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company have sufficient sources of electricity and renewable energy attributes in place to exceed the maximum fifteen percent (15%) requirement, but Ameren Missouri does not.<sup>15</sup>

15. Ameren Missouri anticipates that its current resources will not allow it to meet its renewable energy standards requirements after 2018,<sup>16</sup> but it plans to acquire 400 MW of wind capacity, starting in 2019 and have it in place by 2026.<sup>17</sup>

16. Mark Twain could help enable Ameren Missouri to comply with its renewable energy standards requirements and with the EPA's CPP.<sup>18</sup>

17. There is significant potential for wind development in north central and northeast Missouri, including in the Adair Wind Zone.<sup>19</sup>

18. The northeast Missouri Energy Zone has the opportunity for significant generation development, more specifically renewable generation in the form of wind generation. This region has topography and wind speeds favorable to the development of wind generation especially with current wind turbine technology.<sup>20</sup>

---

<sup>14</sup> Id. at 9-12.

<sup>15</sup> Ex. 25, pp. 6-7.

<sup>16</sup> File No. EO-2015-0084.

<sup>17</sup> Id. at Ex. 12, p. 15.

<sup>18</sup> Ex. 25, pp. 6-9.

<sup>19</sup> Ex. 17, p. 5.

<sup>20</sup> Id. at 7.

## Reliability

19. For northeast Missouri, including Kirksville, the project would maintain voltage levels if certain North American Electric Reliability Corporation (“NERC”) Category C contingencies were to happen.<sup>21</sup>

20. The addition of the 345 kV lines and step down transformer at West Adair is especially effective in resolving 161 kV line overloads on the lines out of West Adair and preventing the loss of the generation at West Adair during certain NERC Category C events.<sup>22</sup> This project will mitigate two bulk electric system (BES) NERC Category B thermal constraints and five NERC Category C constraints. It will also relieve three non-BES NERC Category B and two NERC Category C constraints.<sup>23</sup>

21. Mark Twain is an integral part of a portfolio of MVPs that was approved by the MISO Board of Directors in December 2011 as necessary to facilitate the delivery of renewable energy, resolve numerous reliability issues, reduce transmission line losses, and provide economic and efficiency benefits to customers within the MISO footprint.<sup>24</sup>

22. In 2008, MISO began the study process by undertaking a Regional Generation Outlet Study to investigate how best to fulfill various Renewable Portfolio Standards (“RPS”) requirements reliably and efficiently by accessing wind resources located across the MISO footprint.<sup>25</sup>

---

<sup>21</sup> Ex. 29, p. 8.

<sup>22</sup> Id. A Category C event is the loss of two or more bulk electric system elements, whereas a Category B event is the loss of a single bulk electric system element.

<sup>23</sup> Id.

<sup>24</sup> Ex. 3, p. 5.

<sup>25</sup> Ex. 3, p. 9.

23. During the study process, MISO and the stakeholders developed a robust business case for the MVPs which demonstrated that not only will the MVP Portfolio reliably enable RPS requirements to be met, but it will do so in a manner where its economic benefits exceed its costs. While the study focused upon the states' RPS requirements, the MVP Portfolio has widespread benefits beyond the delivery of wind and other renewable energy. It will enhance system reliability and efficiency under a variety of different generation build outs. It will also open markets to competition, reducing congestion and spreading the benefits of low cost generation across the MISO footprint. The projects in the 20 II MVP Portfolio were evaluated against MVP criteria and their ability to reliably enable the renewable energy mandates of the MISO states.<sup>26</sup>

24. For a project to be an MVP, it must meet at least one of the following criteria: 1) it must be developed through the transmission expansion planning process to enable the system to deliver energy reliably and economically in support of documented energy policy or mandates; 2) it must give multiple types of economic value across multiple pricing zones with a total MVP benefit to cost ratio of 1.0 or higher; 3) it must address a least one transmission issue associated with a projected violation of a NERC or Regional Entity standard, and at least one economic-based transmission issue that gives economic value across multiple pricing zones.<sup>27</sup>

25. Specifically, Mark Twain will increase reliability in the northeast portion of Missouri, including Kirksville.<sup>28</sup>

---

<sup>26</sup> Id. at 9-10.

<sup>27</sup> Id. at 8-9

<sup>28</sup> Id. at 11.

26. Ameren Services determined that the northeastern Missouri area, including Kirksville, would be exposed to low voltages for certain contingency conditions at peak load levels. The existing transmission system has three 161-kV lines that supply Ameren Missouri and rural electric cooperative customers located in northeastern Missouri (including Adair, Kirksville, Newark, Novelty, Emerson, etc.). Ameren Services determined that if certain NERC Category C events occurred during peak load periods, then low voltage conditions would occur in northeastern Missouri that could result in the loss of customer load in the area. The addition of the Mark Twain Project will provide a new 345-kV source to the northeastern Missouri area that will maintain adequate system voltages for the identified NERC Category C contingencies and prevent loss of customer loads.<sup>29</sup>

#### Transmission line losses

27. The 17 projects that comprise the MVP portfolio were determined by MISO and the MISO Board of Directors 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. The portfolio is a “no regrets” portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.<sup>30</sup>

---

<sup>29</sup> Id. at 14.

<sup>30</sup> Ex. 3, p. 5; Tr. Vol. 5, p. 179, 194-95; Ex. 35, p. 16, 20., Sch. JTW-1.

### Economic benefits

28. ATXI also performed an economic analysis of Mark Twain. The analysis found that Mark Twain would enable additional wind generation to support achievement of Missouri renewable requirements, thus demonstrating the need for. It also found that Mark Twain's development would be expected to decrease wholesale prices for electric power and decrease the costs of producing electricity to meet customer loads. Reductions in production costs, in turn, would lead to reductions in the charges for electric power to retail customers in Missouri that far outweigh the impact of transmission charges to Missouri load-serving entities (primarily Ameren Missouri) that would arise from Mark Twain. Thus, these reductions in payments for electric energy would far outweigh the ultimate impact of Mark Twain on Missouri customers' retail electric rates.<sup>31</sup>

29. In addition, ATXI's analysis reflects supplies of wind power that would be enabled by Mark Twain and that can support the achievement of state renewable energy targets. Finally, Mark Twain would also reduce emissions of carbon dioxide ("CO") generated throughout the MISO footprint, as well as reduce emissions of nitrogen oxides ("NOx"), sulfur dioxide ("SO2") and mercury from sources within Missouri. In total, these impacts would provide substantial benefits to Missouri.<sup>32</sup>

30. MISO's Triennial Review identified benefits of \$21,451,000-\$66,816,000 associated with the cost of \$8,303,000-\$17,192,000 for the MVP portfolio.<sup>33</sup> The majority of the benefits are found in reducing congestion-driven production costs,

---

<sup>31</sup> Tr. Vol. 5, pp. 193-196.

<sup>32</sup> Ex. 3, pp. 4-5.

<sup>33</sup> Ex. 35, Sch. JTW-2 p. 26.

providing for more efficient dispatch of generators by using lowest cost generation throughout the MISO footprint. Mark Twain provides Missouri access to the region, zero production cost of the renewable energy, and takes advantage of the efficiencies of participation in the multi-state energy trading construct.<sup>34</sup>

31. The MISO analyses were completed first in late 2011 when the MVP portfolio was approved, and were then updated in 2014, as part of the triennial review required by MISO's FERC-approved tariff. The MISO analyses demonstrate that there exist significant MISO-wide benefits from the entire MVP portfolio in every single scenario that was studied, with benefits exceeding the costs throughout the MISO footprint by 1.8 to 3.0 times.<sup>35</sup>

32. Also, if a key element of the plan like Mark Twain is not built, economic benefits are lost and alternative but less optimal reliability solutions will have to be developed.<sup>36</sup>

33. With Mark Twain in place, the transmission system can reliably and economically connect *and deliver* up to 1,347 MW of wind generation constructed in the Adair Wind Zone (designated by MISO as zone Mo-C), and thus a proposed 400 MW project in Schuyler County, and significantly more wind, can be connected and delivered from that zone.<sup>37</sup>

---

<sup>34</sup> Id. at 15-16.

<sup>35</sup> Ex. 35, p. 16.

<sup>36</sup> Ex. 35, p. 13.

<sup>37</sup> Tr. Vol. 9, pp. 570, 692.



34. Also, Mark Twain was developed through MISO's MVP study process. That process was designed to support the achievement of state renewable energy requirements through infrastructure investments that minimized costs.<sup>38</sup>

#### Benefits in excess of costs

35. The portfolio is a "no regrets" portfolio, meaning it creates significant benefits in excess of costs across a wide variety of scenarios.<sup>39</sup>

36. MISO's Triennial Review identified benefits of \$21,451,000-66,816,000 associated with the cost of \$8,303,000-\$17,192,000 for the MVP portfolio.<sup>40</sup>

37. The majority of the benefits are found in reducing congestion-driven production costs, providing for more efficient dispatch of generators by using lowest cost generation throughout the MISO footprint. In all, the MVP portfolio creates benefit to cost ratios of 1.8 to 3.0 as identified under MTEP 2011 assumptions, and 2.6 to 3.9 as identified under Triennial Review assumptions. The Missouri ratios are 2.0 to 2.9 and 2.3 to 3.3, respectively.<sup>41</sup>

38. Most of the benefits that will accrue to Missouri are based upon reduced generation costs made possible by construction of the MVP portfolio.<sup>42</sup>

---

<sup>38</sup> Ex. 21, pp. 4, 8.

<sup>39</sup> Tr. Vol. 5, p. 179, 194; Ex. 35, p. 20.

<sup>40</sup> Ex. 35, Sch. JTW-2, p. 26.

<sup>41</sup> Ex. 35, pp. 15-16.

<sup>42</sup> Ex. 35, Sch. JTW-2, p. 52.

### Downward impact on wholesale costs

39. Regardless of whether Missouri has a Renewable Energy Standard, Mark Twain and the other MVP lines in the portfolio impact the production costs across the system, resulting in lower wholesale energy costs.<sup>43</sup>

40. If Mark Twain is not in service, and if the wind is cheaper with the project than without, then Ameren Missouri ratepayers suffer. But adding the wind that Mark Twain could transmit would have a positive impact on Ameren Missouri ratepayers.<sup>44</sup>

### New generation, including combined cycle natural gas

41. The MVP portfolio facilitates the delivery of new generation throughout the MISO footprint, including new combined cycle natural gas generation. This is because one of the routing considerations used by MISO in determining the location of the MVPs was the new transmission lines' proximity to natural gas pipelines.<sup>45</sup>

42. MISO's analysis balanced relative wind capacities with distances from natural gas pipelines and interconnection with the existing transmission infrastructure.<sup>46</sup>

### Access to wind zones

43. There is significant potential for wind development in north central and northeast Missouri, including in the Adair Wind Zone.<sup>47</sup>

---

<sup>43</sup> Tr. Vol. 9, p. 594.

<sup>44</sup> Tr. Vol. 5, p. 194; Vol. 10, p. 745.

<sup>45</sup> Ex. 4HC, p. 40; Ex. 35 p. 12.

<sup>46</sup> Ex. 35, pp. 11-12.

<sup>47</sup> Ex. 17, p. 5.

44. The northeast Missouri Energy Zone has the opportunity for significant generation development, more specifically renewable generation in the form of wind generation. This region has topography and wind speeds favorable to the development of wind generation especially with current wind turbine technology.<sup>48</sup>

45. With Mark Twain in place, the transmission system can reliably and economically connect *and deliver* up to 1,347 MW of wind generation constructed in the Adair Wind Zone (designated by MISO as zone Mo-C), and thus a proposed 400 MW project and significantly more wind can be connected and delivered from that zone.<sup>49</sup>

46. Mark Twain, as part of the MVP portfolio, will provide additional transfer capability for wind resources that may choose to construct in Northeast Missouri and allow them to provide energy to states throughout the Midwest.<sup>50</sup>

47. The Adair Wind Zone presents wind farm siting opportunities due to its topography and wind speeds.<sup>51</sup> MISO conducted a study, evaluating, among other things, “optimal wind conditions,” with the intent to “optimize wind generation placement.”<sup>52</sup>

48. The characteristics of the Adair Wind zone, combined with Mark Twain’s proximity to it and the ability to transmit energy generated within the zone, create the potential for up to 1,347 megawatts of wind generation to be developed in northeast Missouri.<sup>53</sup>

---

<sup>48</sup> Id. at 7.

<sup>49</sup> Tr. Vol. 9, p. 570.

<sup>50</sup> Ex. 4, p. 39.

<sup>51</sup> Ex. 17, p. 7.

<sup>52</sup> Ex. 29, p. 6.

<sup>53</sup> Ex. 17, pp. 6-7.

49. Another reason the additional wind generation is expected is its low cost relative to other renewable resources. Looking at the levelized cost of energy, and based on current technologies, wind-generated electricity is lower cost than solar-generated electricity.<sup>54</sup> Moreover, the Production Tax Credit, originally scheduled to expire at the end of 2016, was extended until 2019.<sup>55</sup> The credit encourages future wind development by providing a tax credit to wind developers for a generation project started by the end of 2019.<sup>56</sup>

50. The location of Mark Twain near the Adair Wind zone, the relatively low cost of wind as a renewable resource, and the extension of the relevant tax credits until 2019, all encourage the construction of wind generation, and increase the likelihood of wind farms delivering electricity onto Mark Twain. MISO recently added a 400 MW wind generation project into its queue, which is proposed to connect to the completed Mark Twain project 345 kV line in Schuyler County.<sup>57</sup>

### Congestion

51. MISO's analysis shows Mark Twain will distribute economic benefits from reduced congestion and production costs.<sup>58</sup>

52. Mark Twain "will also increase reliability in the Northeast portion of Missouri, including the Kirksville area."<sup>59</sup> If built, Mark Twain would allow the areas it

---

<sup>54</sup> Ex. 12, pp. 8-10.

<sup>55</sup> Tr. Vol. 7, pp. 512-513.

<sup>56</sup> Id.

<sup>57</sup> Tr. Vol. 5, pp. 203-04.

<sup>58</sup> Ex. 35, pp. 10, 14-16; Ex. 21, p. 6.

<sup>59</sup> Ex. 3, p. 11

covers in northeast Missouri to “maintain voltage levels if certain NERC Category C contingencies were to happen under certain system conditions.”<sup>60</sup>

53. Mark Twain is “critical to resolving 161-kV overloads in northeast Missouri . . . since [g]enerator interconnection studies for projects in northeast Missouri consistently show significant overloads on the existing 161-kV system when attempting to add new generation.”<sup>61</sup>

54. The addition of the 345 kV lines and step down transformer at West Adair is especially effective in resolving 161 kV line overloads on the lines out of West Adair and preventing the loss of the generation at West Adair during certain NERC Category C events. This project will mitigate two bulk electric system (BES) NERC Category B thermal constraints and five NERC Category C constraints. It will also relieve three non-BES NERC Category B and two NERC Category C constraints.<sup>62</sup>

#### Meeting local load needs

55. Mark Twain provides an outlet for generation in the Adair Wind Zone and from outside Missouri to load centers, including load centers in Missouri.<sup>63</sup>

56. Mark Twain is necessary to meet local load serving needs of the system in the area.<sup>64</sup>

---

<sup>60</sup> Ex. 29, p. 8.

<sup>61</sup> Ex. 17, p. 6.

<sup>62</sup> Ex. 35, Sch. JTW-1, p. 34.

<sup>63</sup> Ex. 17, p. 6.

<sup>64</sup> Ex. 35, pp. 9, 14; Ex. 3, p. 14.

### Redundancy to enhance grid reliability

57. The new lines “will provide reliability benefits by mitigating a number of contingent outage events during peak and shoulder periods, where the wind generation component is much higher.”<sup>65</sup>

58. Mark Twain “is especially effective in resolving 161 kV line overloads on the lines out of West Adair during certain NERC Category C events.”<sup>66</sup>

59. The addition of Mark Twain will provide a new 345-kV source to the northeastern Missouri area that will maintain adequate system voltages for the identified NERC Category C contingencies and prevent loss of customer loads.<sup>67</sup>

### Qualified to provide the service

60. The significant experience of ATXI’s executive personnel shows that it has the qualifications needed to own, operate, control and manage Mark Twain.<sup>68</sup>

61. Maureen A. Borkowski, BSME, is the president of ATXI and senior vice-president of Ameren Services Company, and has worked continuously at affiliates of Ameren Corporation since 1981, except when she privately consulted for over four years from 2000 to 2005, primarily with regard to activities relating to transmission.<sup>69</sup>

---

<sup>65</sup> Ex. 29, pp. 7-8.

<sup>66</sup> Id.

<sup>67</sup> Ex. 3, p. 14.

<sup>68</sup> Ex. 25, pp. 10-11.

<sup>69</sup> Ex. 1, pp. 1-2.

62. James Jontry, BSE, MBA, PE (Missouri), is employed by Ameren Services Company as the senior project manager who is responsible for the planning, execution, completion and operational integration of Mark Twain.<sup>70</sup>

63. David Endorf, MSCE, PE (Missouri and Illinois), is employed by Ameren Services Company to design transmission line projects, including Mark Twain for Ameren affiliates.<sup>71</sup>

64. Dennis D. Kramer, BS Electrical Technology, MBA, with 35 years of experience in the regulated electric utility industry, is employed by Ameren Services Company as Senior Director of Transmission Policy, Planning and Stakeholder Relations, and provides support services including engineering, construction management, planning, finance, accounting and legal services.<sup>72</sup>

65. In addition to providing personnel who are planning, executing, completing and carrying out the operational integration of the project, ATXI has access to Ameren Services personnel who will operate and maintain the project.<sup>73</sup>

#### Financial ability

66. ATXI is a subsidiary of Ameren Corporation (“Ameren”).<sup>74</sup>

67. Ameren has investment grade credit ratings from Standard & Poor’s, Moody’s and Fitch Ratings. Ameren’s investment grade credit ratings are supported by its ownership of Ameren Missouri and Ameren Illinois.<sup>75</sup>

---

<sup>70</sup> Ex. 19, pp. 1-2.

<sup>71</sup> Ex. 13, pp. 1-2.

<sup>72</sup> Ex. 3, pp. 1-4.

<sup>73</sup> Ex. 1, p. 4.

<sup>74</sup> Ex. 31, p. 2.

68. Further, as of June 30, 2015, Ameren had \$364 million of direct borrowing capacity.<sup>76</sup>

69. Simply based on Ameren's remaining borrowing capacity, ATXI has the ability to raise the projected \$224 million of capital needed for Mark Twain.<sup>77</sup>

#### Economically feasible

70. Mark Twain is economically feasible because ATXI will receive payments for the construction and operation of the project through MISO's Open Access Transmission Tariffs.<sup>78</sup>

71. Mark Twain is economically feasible because the project was developed through MISO's MVP study process. That process was designed to support the achievement of state renewable energy requirements through infrastructure investments that minimized costs.<sup>79</sup>

72. ATXI's shareholders are willing to finance the project, which also shows economic feasibility.<sup>80</sup>

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 3.

<sup>77</sup> *Id.*

<sup>78</sup> Ex. 32, p. 2

<sup>79</sup> Ex. 21, pp. 4-8.

<sup>80</sup> Tr. Vol. 5, p. 120-21.



## Public interest

### Cost/benefit

73. The appropriately balanced overall cost-benefit ratio for the MVP portfolio for the areas of Missouri located in the MISO region is 2.0-2.9.<sup>81</sup>

74. In 2014, a required triennial review of the 2011 MTEP, including Mark Twain, increased the projected cost-benefit ratio of the areas of Missouri located in the MISO region, where Mark Twain is located, to 2.3-3.3.<sup>82</sup>

### Health

75. Anything that generates, transmits or uses electricity has both an electric field and a magnetic field in the space surrounding it.<sup>83</sup>

76. These fields, generated at a power frequency of 60 Hertz (the frequency of the proposed transmission line in this case), are commonly referred to as EMF.<sup>84</sup>

77. Because all lines, devices, appliances, and wiring connected to the AC electric power system produce EMF at this frequency, these fields are virtually everywhere – including at background levels in homes in the United States.<sup>85</sup>

78. And because electric fields are blocked by most conductive objects (trees, fences, walls, the human body, etc.) and magnetic fields are not, EMF most often refers

---

<sup>81</sup> Ex. 64, p. 4.

<sup>82</sup> *Id.*

<sup>83</sup> Ex. 5, p. 6.

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* at 7.

to and is primarily concerned with the magnetic fields produced by power sources such as the proposed transmission line.<sup>86</sup>

79. Reliable and recent studies have failed to show a correlation between EMF and childhood leukemia.<sup>87</sup>

80. Almost 40 years of research has failed to confirm any adverse health effects from EMF levels found in our environment, including exposure levels found near high-voltage transmission lines.<sup>88</sup>

81. Also, EMF has not been demonstrated to adversely affect bee health or productivity.<sup>89</sup>

82. ATXI presented credible evidence of calculations of the magnetic fields at average loading on Mark Twain in relation to the nearest residence for each segment of the route. These ranges fell into the range of magnetic fields similar to those that would be measured in residences in the absence of a transmission line.<sup>90</sup>

83. Mark Twain will not be a source of stray voltage, thereby it poses no threat to cattle, livestock or people.<sup>91</sup>

---

<sup>86</sup> *Id.* at 4.

<sup>87</sup> *Id.* at 22.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 39-41.

<sup>90</sup> *Id.* at 29-30.

<sup>91</sup> *Id.* at 32; Ex. 14, pp. 4-5.

## Environment

84. Routing principles that ATXI considered during route selection included minimizing impacts to natural resources such as wetlands, woodlands and wildlife, and avoiding federal and state lands and conservation and restricted easement areas.<sup>92</sup>

85. After consulting with the Missouri Department of Conservation (“MDC”), the Missouri Department of Natural Resources, and U.S. Fish & Wildlife Service. ATXI made adjustments to the proposed routes under consideration in order to minimize stream crossings, wetlands, and other route considerations.<sup>93</sup>

86. The selection of the final routes also took into account environmental concerns. In the Maywood to Zachary portion of the route, the final route crossed fewer acres of wetland, avoided crossing federally-owned or operated lands and state-owned wildlife refuges, parks and conservation areas, and avoided Natural Resources Conservation Service watershed easements.<sup>94</sup>

87. While the final route for this segment crosses approximately 0.8 acres of a privately-owned, state-operated easement along the South Fabius River, selection of this segment avoided crossing 3.9 acres of a similar state-operated, privately-owned easement located on the alternate route.<sup>95</sup>

88. ATXI considered environmental concerns – including those raised by the MDC – when it selected the southern route as the final route in the Maywood to Zachary segment of the line.<sup>96</sup>

---

<sup>92</sup> Ex. 15, p. 8.

<sup>93</sup> *Id.* at pp. 11-12, 16.

<sup>94</sup> *Id.* at 23.

<sup>95</sup> *Id.*; Ex. 16, p. 11.

<sup>96</sup> Ex. 16, p. 11.

89. Environmental concerns were also considered in the selection of the final route in the Zachary to Iowa state line segment of the transmission project. The alternative selected as the final route for this segment minimized the length across forested lands and avoided crossing any state- or federally-owned or operated lands, such as wildlife refuges, state parks and conservation areas.<sup>97</sup>

90. The final route will not cross any of the locations identified as known habitats for Indiana bats.<sup>98</sup>

### Farming

91. Less than one acre of actual farmland will be taken out of production for the entire 95-miles of 345-kV line.<sup>99</sup>

92. While the actual easement area includes 523 agricultural acres, less than one acre of farmland will be removed from production because the only land permanently removed from cultivation is the area of the footprint of the foundations for the monopole structures.<sup>100</sup>

93. One of the benefits of using such a structure is to minimize the line's contact points with the land and allow better maneuverability around the structures.<sup>101</sup>

94. ATXI has agreed to compensate landowners for damages associated with constructing the project.<sup>102</sup>

---

<sup>97</sup> Ex. 15, pp. 26-27.

<sup>98</sup> Tr. Vol. 7, pp. 469-74.

<sup>99</sup> Ex. 7, p. 6; Tr. Vol 7, p. 488.

<sup>100</sup> Ex. 7, p. 6; Ex. 8, p. 5.

<sup>101</sup> Ex. 14, pp. 3-4.

<sup>102</sup> Tr. Vol. 5, pp. 260-61.

95. Although the final route runs diagonally on some parcels, the final route selected by ATXI was less diagonal than the alternative routes.<sup>103</sup>

96. Also, paralleling transmission lines, as suggested by Neighbors United, increases the likelihood of common-mode failures – the likelihood that a line failure will cause an adjacent line to fail.<sup>104</sup>

97. Further, burying the line could increase the cost of the project tenfold.<sup>105</sup>

98. There should be no impact on farming operations outside the easement area and, for that matter, only minimal farming-related impacts inside the easement area around the footings as farmers may continue to use the land under the transmission lines.<sup>106</sup>

99. It is unlikely that additional land would need to be removed from production because ground-based applications can be used to cover areas no longer suitable for aerial application.<sup>107</sup>

100. The steel monopoles are designed to meet or exceed the National Electric Safety Code and will be able to withstand an extreme wind load of almost 100 miles per hour.<sup>108</sup>

101. The conductors are designed to withstand the loads imposed by 1 inch of radial ice, along with a 40-mile per hour wind. The line is protected with relays that will

---

<sup>103</sup> Tr. Vol. 7, p. 465.

<sup>104</sup> Ex. 11, pp. 3-6.

<sup>105</sup> Tr. Vol. 7, pp. 501-502.

<sup>106</sup> Ex. 8, p. 4.

<sup>107</sup> Ex. 10, p. 7.

<sup>108</sup> Ex. 41, p. 6; Ex. 14, p. 5.

open breakers to take the line out of service in the highly unlikely event where a conductor would break and fall to the ground.<sup>109</sup>

102. ATXI will address the soil compaction caused by construction activity by restoring the land using a deep ripper unless the landowner desires to make other arrangements.<sup>110</sup>

103. ATXI will either compensate the owner for any compaction caused by construction activities or have a restoration contractor remove the compaction so that crop yields would not be compromised.<sup>111</sup>

104. If soil issues remain following reclamation efforts, ATXI's procedures provide that ATXI will pay damages to the landowner.<sup>112</sup>

105. High-voltage transmission lines do not interfere with GPS systems due to frequency separation.<sup>113</sup>

106. The proposed transmission line will operate at 60 Hertz, which is an extremely low frequency, while GPS systems operate in the frequency range of 1.2 billion to 1.5 billion Hertz. Because they operate at two different ends of the spectrum, there is no opportunity for one to interfere with the other.<sup>114</sup>

107. ATXI identified and avoided all known pivot irrigation systems along the transmission line route.<sup>115</sup>

---

<sup>109</sup> Ex. 14, p. 5.

<sup>110</sup> Ex. 10, p. 5; Ex. 8, Sch. DBR-SR2.

<sup>111</sup> Tr. Vol. 5, p. 252.

<sup>112</sup> Ex. 10, p. 5.

<sup>113</sup> Ex. 6, p. 6.

<sup>114</sup> Id. at pp. 4-6.

<sup>115</sup> Ex. 16, p. 6.

108. Transmission line monopoles do not prohibit the future use of pivot irrigation on a particular parcel because the systems may be designed to operate exclusive of the area where the monopoles are located.<sup>116</sup>

109. Although it would be rare that an irrigation system could not be accommodated during construction, the inability to install a center pivot irrigation system or other irrigation systems would be factored into the compensation ATXI offered the landowner.<sup>117</sup>

110. Only if the presence of a transmission line would be entirely inconsistent with land used for a federal Conservation Reserve Program (“CRP”) would a CRP contract be cancelled. Should this occur, such damages would be eligible for reimbursement.<sup>118</sup>

#### Amish-Mennonite concerns

111. The proposed line traverses only one property identified by Neighbors United as having an Amish or Mennonite owner.<sup>119</sup>

112. That family’s residence is located almost one-half mile from the route.<sup>120</sup>

---

<sup>116</sup> Tr. Vol. 7, pp. 309-10, pp. 325-26.

<sup>117</sup> Ex. 8, p. 9; Tr. Vol. 5, p. 259.

<sup>118</sup> Ex. 10, p. 10.

<sup>119</sup> *Joint Report on the Location of ATXI’s Transmission Line in Relation to Identified Amish and Mennonite-owned Properties*, ¶ 6 (filed February 19, 2016).

<sup>120</sup> *Id.* at Ex. C; Tr. Vol. 5, p. 242.

### Land values

113. Any loss in fair market value of a property due to a transmission line easement is something properly considered in the appraisal process in condemnation cases.<sup>121</sup>

### County assents

114. ATXI does not have county commission permissions for Mark Twain to cross public roads and highways.<sup>122</sup>

### Other conditions on certificate

115. The conditions upon the certificate as agreed upon by ATXI and Staff, which are listed in the ordered paragraphs below, are reasonable.<sup>123</sup>

## **Conclusions of Law**

1. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.<sup>124</sup>

---

<sup>121</sup> Ex. 9, pp. 2-3.

<sup>122</sup> Tr. Vol 5, p. 95.

<sup>123</sup> Ex. 25, p. 16; Ex. 2, p. 3; Ex. 14, pp. 8-9; Ex. 33; Tr. Vol. 5, p. 233-34; Ex. 25, p. 17; Ex. 2, pp. 5-6; Ex. 34;

<sup>124</sup> Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 382 (Mo. App. 2005).



2. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.<sup>125</sup>

3. Testimony need not be refuted or controverted to be disbelieved by the Commission.<sup>126</sup>

4. The Commission determines what weight to accord to the evidence adduced.<sup>127</sup>

5. The Commission may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."<sup>128</sup>

6. The Commission may evaluate the expert testimony presented to it and choose between the various experts.<sup>129</sup>

7. The Commission has general supervisory authority over all "electrical corporations." Specifically, the Commission has authority over electrical corporations and their plant that are created "for the purpose of furnishing *or transmitting* electricity for light, heat, or power."<sup>130</sup>

8. Section 386.020(15), RSMo (Cum. Supp. 2013) defines "electrical corporation" as including:

every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to

---

<sup>125</sup> *State ex rel. Associated Natural Gas Co. v. Public Service Com'n*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

<sup>126</sup> *State ex rel. Rice v. Public Service Com'n*, 220 S.W.2d 61, 65 (Mo. banc 1949).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Associated Natural Gas, supra*, 706 S.W.2d at 882.

<sup>130</sup> Section 393.140(1) (emphasis supplied).

others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes for its own use or the use of its tenants and not for sale to others.

9. “Electric plant” includes:

all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, *transmission*, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power (emphasis added).<sup>131</sup>

10. ATXI is an electric utility and a public utility subject to Commission jurisdiction.<sup>132</sup>

11. The Right to Farm Amendment to The Missouri Constitution provides that “the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state . . . .”<sup>133</sup>

12. The Commission has no authority to rule on the constitutionality of a statute.<sup>134</sup>

13. The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.<sup>135</sup>

---

<sup>131</sup> Section 386.020(14).

<sup>132</sup> Section 386.020(15), (42) RSMo. Cum. Supp. 2013.

<sup>133</sup> Mo. Const., Art. 1, § 35.

<sup>134</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).

<sup>135</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).

14. However, constitutional issues must be raised at the first opportunity,<sup>136</sup> and the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction.<sup>137</sup>

15. Prior to constructing the requested facility, ATXI must receive a certificate of convenience and necessity from the Commission.<sup>138</sup>

16. The Commission may impose conditions on the certificate of convenience and necessity that it finds reasonable and necessary.<sup>139</sup>

17. The Commission may grant a certificate of convenience and necessity when it determines, after due hearing, that the proposed project is “necessary or convenient for the public service”.<sup>140</sup>

18. The term “necessity” does not mean “essential” or “absolutely indispensable”, but rather that the proposed project “would be an improvement justifying its cost”.<sup>141</sup>

19. It is within the Commission’s discretion to determine when the evidence indicates that the public interest would be served by the award of the certificate.<sup>142</sup>

20. “The Commission has traditionally used five criteria to determine whether to grant a certificate of convenience and necessity: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the

---

<sup>136</sup> See *State ex. rel. MoGas Pipeline LLC v. Public Service Com’n*, 395 S.W.3d 562, 568 (Mo.App. W.D. 2013).

<sup>137</sup> See, e.g., *Missouri Southern R. Co. v. Public Service Com’n*, 214 S.W. 379, 380 (Mo. 1919).

<sup>138</sup> Section 393.170.

<sup>139</sup> Section. 393.170.3 RSMo.

<sup>140</sup> Section 393.170.

<sup>141</sup> See, e.g., *State ex. rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d 216, 219 (Mo.App. 1973).

<sup>142</sup> *State ex. rel. Ozark Electric Coop. v. Public Service Commission*, 527 S.W.2d 390, 392 (Mo.App. 1975).

applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest."<sup>143</sup>

21. "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."<sup>144</sup>

22. "No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or 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; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission."<sup>145</sup>

23. "When consent by a . . . county is required, approval shall be shown by a certified copy of the document granting the consent . . . , or an affidavit of the applicant that consent has been acquired."<sup>146</sup>

---

<sup>143</sup> Report and Order, *In re Application of Tartan Energy Company, L.C. d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity*, File No. GA-94-127, 3 Mo. P.S.C. 3d 173 (September 16, 1994) 1994 WL 762882, \*3 (Mo. P.S.C.)

<sup>144</sup> *In re Tartan*, 3 Mo.P.S.C.3d at 189.

<sup>145</sup> § 229.100 RSMo.

<sup>146</sup> Commission Rule 4 CSR 240-3.105(1)(D)1.

24. “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.”<sup>147</sup>

25. The Court of Appeals stated, “Section 229.100 simply prohibits public utilities from erecting power lines without first having obtained the assent of the county commission of such county therefore.”<sup>148</sup>

26. A certificate of convenience and necessity does not override or repeal any existing authority of municipalities or counties. It simply allows the utility “to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent.”<sup>149</sup>

### **Decision**

Applying the above Findings of Fact and Conclusions of Law, the Commission reaches the following decision:

#### **Authority to rule on application**

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. 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

---

<sup>147</sup> Commission Rule 4 CSR 240-3.105(2).

<sup>148</sup> *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 40 (Mo.App. W.D. 2005).

<sup>149</sup> *Id.* (emphasis supplied) (citing *State ex. inf. Shartel v. Missouri Utilities Co.*, 331 Mo. 337, 53 S.W.2d 394, 399 (1932)).

farming or ranching in violation of the Right to Farm Amendment to the Missouri Constitution.

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>150</sup> Accordingly, because the potential issuance of a CCN does not, in and of itself, deprive any member of Neighbors United of the ability to farm or ranch, the cited constitutional provision cannot provide the basis for denying the Application. The Commission has authority to rule on ATXI's application.

#### Certificate of convenience and necessity

The Commission finds that ATXI has shown it is entitled to a CCN. ATXI has shown a need for Mark Twain, qualifications to own and operate it, the financial ability to build it, the economic feasibility of building it, and the public interest that would be served by building it. Notably, there is a benefit to Missouri ratepayers if this CCN is granted. Thus, ATXI has satisfied the *Tartan* criteria.

The Commission has great sympathy for the affected individual landowners, particularly those in the Amish and Mennonite communities who have certain values and beliefs that are in conflict with the project. But the Commission must balance the direct but narrow property interests of a few against the indirect but broad economic and environmental interests of the general public.

---

<sup>150</sup> Section 523.010, .262 RSMo.

In this case, the project is in the public interest because it is needed to:

- Promote grid reliability
- Relieve congestion
- Promote renewable energy
- Meet local load serving needs
- Provide downward pressure on customer rates

The Commission grants ATXI the certificate of convenience and necessity.

### County assents

However, the Commission will impose a condition of acquiring county assents upon the certificate. ATXI does not have assent from any of the counties through which Mark Twain would run. ATXI must get assent from each county through which Mark Twain would run before the certificate becomes effective. The Commission believes the plain language of § 229.100 RSMo and its own rules require as much. If, however, a reviewing court determines that § 229.100 RSMo does not require ATXI to obtain these assents, this condition will, of course, be null and void.

The Commission understands ATXI's argument that county assent is required for an "area certificate" to serve retail customers, but is not required for a transmission "line certificate" which it seeks.<sup>151</sup> The Commission finds all of the applicable cases distinguishable from the case at bar.

---

<sup>151</sup> See, e.g., *Cass County v. Pub. Serv. Com'n*, 259 S.W.3d 544, 548-49 (Mo.App. W.D. 2008)(otherwise known as "Aquila II")(wherein the Court referred to the authority needed to build a transmission line as a line certificate, and the authority needed to exercise a franchise by serving customers as an area certificate. See also *Stopaquila.org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo.App. W.D. 2005)(otherwise known as "Aquila I"); *State ex. rel. Harline v. Pub. Serv. Com'n*, 343 S.W.2d 177, 182-85 (Mo.App. 1960).

In *Harline*, the Court held that the utility did not need a line certificate to build a transmission line in an area where it already had an area certificate. *Aquila I* held that the utility's construction of a new power plant was subject to county zoning. And *Aquila II* held that the Commission could not lawfully approve a power plant after it was built. In all these cases, the utility had one or more area certificates.

The Commission finds some language from *Aquila II* instructive; it states

“(T)his court has held, in *Harline*, that it is not necessary for a utility to obtain a new line certificate before extending transmission lines through its certificated area . . . Utilities must, nonetheless, obtain line certificates to extend transmission lines beyond their certificated areas.”<sup>152</sup>

That language reflects only two possibilities: either a transmission line through territory for which a utility holds an area certificate, or a transmission line beyond the territory for which a utility holds an area certificate. In both instances, the utility has an area certificate.

But ATXI would have the Commission stretch the holding of *Harline* to read that county commission approval is not necessary for a new line certificate even when a utility does not already hold an area certificate. *Harline* and its progeny did not contemplate a utility having a line certificate without a corresponding area certificate, and thus did not address circumstances where a utility has not already sought county or municipal consent. 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.

---

<sup>152</sup> *Aquila II*, 259 S.W.3d at 552, fn. 6 (emphasis added).



## Conditions

In addition, the Commission finds the conditions agreed to by Staff and ATXI to be reasonable, and thus, will impose them.

### **THE COMMISSION ORDERS THAT:**

1. The application for a certificate of convenience and necessity to construct the Mark Twain Project is granted, subject to the conditions listed below.

2. The certificate is contingent upon ATXI providing certified copies of county assents for the Mark Twain Project from Marion, Shelby, Knox, Adair, and Schuyler Counties, Missouri.

3. The plans and specifications for 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.

4. 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 is given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.

5. Absent a voluntary agreement for the purchase of the 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.

6. 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.

7. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DB-R-2* attached to Dan Beck's Rebuttal Testimony.

8. ATXI shall follow the construction, clearing, maintenance, repair, and right-of-way practices set out in *Schedule DB-R-2* attached to Dan Beck's Rebuttal Testimony.

9. Because the following rules do not pertain to ATXI due to their lack of retail customers, the Commission finds good cause to waive them, and so waives them: Commission Rules 4 CSR 240-3.145, .165, .175, 190(1), (2), (3)(A)-(D).

10. All pending motions and other requests for relief not granted are denied.

11. This Report and Order shall become effective on May 27, 2016.



**BY THE COMMISSION**

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

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney,  
Rupp, CC., concur.  
Coleman, C., concurring opinion attached.

Dated at Jefferson City, Missouri,  
on this 27<sup>th</sup> day of April, 2016