

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

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

ATXI’S SUR-RESPONSE TO THE NEIGHBORS’ MOTION TO COMPEL

COMES NOW Ameren Transmission Company of Illinois (“Company” or “ATXI”),
and for its sur-response to the Motion to Compel filed by the Neighbors² on January 8, 2016,
states as follows:

1. In reply to ATXI’s response to its Motion to Compel, the Neighbors assert their
“surprise” that “ATXI believes it has no obligation to notify landowners that it intends to build a
transmission line across their property as a part of an application for a certificate of convenience
and necessity before the Commission.... even though its Application incorrectly states that it has
notified all landowners that would be affected by this project.” Neighbors’ Response³ at ¶ 2. It is
this contention to which ATXI primarily replies.

2. As explained in its reply to the Neighbors’ Motion,⁴ ATXI took considerable
effort to identify potentially-affected landowners and provide them notice of the project in order
to obtain their input during the route selection process though it had no legal requirement at this

¹ The project for which the CCN is sought in this case also includes a 161,000-volt line connecting to the associated substation to allow interconnection with the existing transmission system in the area.
² Neighbors United’s Motion to Compel Ameren Transmission Company of Illinois’ Response to Data Requests and Provide Proof of Notice to Affected Landowners. [EFIS Item No. 116]
³ Neighbors United’s Reply to ATXI’s Response to Motion to Compel Ameren Transmission Company of Illinois’ Response to Data Requests and Provide Proof of Notice to Affected Landowners. [EFIS Item No. 122]
⁴ ATXI’s Response to the Neighbors’ Motion to Compel at ¶ 29. [EFIS Item No. 120]

stage of the project to notify landowners. As explained in its reply, ATXI searched county records, mailed letters, held open houses, and aired advertisements in an attempt to give affected landowners and the public in general notice of the route selection process. While the Neighbors argue that ATXI has an obligation to provide notice of this CCN proceeding, they fail to point to a single statute, Commission regulation or Missouri case requiring that an applicant provide that notice.⁵ Moreover, the Neighbors offer nothing to rebut the case law cited by ATXI in its reply⁶ that explicitly establishes that no such obligation exists. Simply put, there is no obligation that a party prove to the Commission that every landowner affected by a particular transmission line project be given personal notice of the Commission proceeding. In fact, the only requirement regarding notice is that ATXI provide notice to the Office of Public Counsel, charged with the duty of representing the interests of the public (of whom the landowners are members),⁷ which it did in this case.⁸

3. The Neighbors' claim that ATXI misrepresented to the Commission in its Application that it provided notice to all landowners affected by the project; as proof, they point not to ATXI's Application but instead to the direct testimony of ATXI witness Christopher J. Wood⁹, filed concurrently with ATXI's Application to describe the route selection process. ATXI made no such misrepresentation. At page 31-33 of Mr. Wood's testimony (to which the

⁵ The Commission's regulation at 4 CSR 240-3.105 sets out the specific filing requirements for an electric utility's application for a certificate of convenience and necessity; that regulation does not include a requirement that those affected by the proposed transmission line be identified or given notice. 4 CSR 240-2.060 sets out the general requirements for applications filed with the Commission; it, too, does not include such a requirement.

⁶ *State ex rel. Ozark Border Elec. Coop. v. Pub. Serv. Comm'n*, 924 S.W.2d 597, 601 (Mo. App. W.D. 1996); *State ex rel. Harline v. Pub. Serv. Comm'n*, 343 S.W.2d 177 (Mo. App. W.D. 1960). The Commission's Staff has confirmed that it too agrees that there is no such obligation. See *Staff's Response*, filed today. [EFIS Item No. 126]

⁷ Section 386.710.3, RSMo. (2000).

⁸ Application at p. 10 (May 29, 2015). [EFIS Item No. 2]

⁹ EFIS Item No. 10.

Neighbors point), Mr. Wood, testifying about the route selection process for the 161-kV connector line, states:

Q. Once the route alternatives were developed, what opportunities were provided for landowner and public input on the proposed route?

A. Due to the small study area and limited route alternatives, individual landowner meetings were offered for those landowners potentially affected by alternative route Option 1 or Option 2. Overall, 15 letters were mailed to property owners potentially impacted by one of the two route alternatives; nine individual landowner meetings were held in Kirksville on February 25, 2015, one individual landowner meeting was held at the Days Inn in Kirksville on February 26, 2015 (prior to the open house), and one individual landowner meeting was held on March 10, . . . 2015, in Kirksville. One landowner did not attend the individual landowner meeting but did attend the public open house workshop. Landowners were shown maps of the route options and had the opportunity to discuss the route options with ATXI and Burns & McDonnell staff in relation to their property.

The public open house workshop was held by ATXI to obtain public input on the route alternatives. Notices for the open house workshop, held on February 26, 2015, were issued through a news release and letters to the affected landowners (who were also invited by ATXI to attend an individual landowner meeting). In addition to landowners who were potentially affected by the Project, federal, state and local agencies previously contacted early in the overall Project development process were notified by letter of the 161-kV connector line portion of the Project and invited to attend the public open house. Participants at the workshop received a 161-kV connector line information sheet and questionnaire to communicate their opinions on routing sensitivities and concerns, route locations, and additional issues of concern. Questionnaires could be completed and left at the workshop, completed and mailed back to Project staff, or completed online via the Project website. **Schedule CJW-02** includes copies of the letter and associated map that were sent to invite landowners to the public open house meeting, the individual landowner meeting invitation, and materials handed out at the open house meeting, as well as the questionnaire and a compilation of the questionnaire results.

The individual landowner meetings and the public workshop provided affected landowners, agency officials, and the public with information and the opportunity to ask questions about the need for the 161-kV connector line, engineering, right-of-way issues, the route selection process, and criteria used to select the proposed route. Through the public involvement process, the Project team was able to obtain information on specific social and natural resources within the study area, such as future development, Conservation Reserve Program (CRP) property, and specific concerns on landowner property, for consideration in the route selection process.

While ATXI certainly attempted to provide notice to all affected landowners in order to obtain their input in the route selection process, there is no statement made here (or anywhere) by Mr. Wood that ATXI was proving that it gave all affected landowners along the entire 95-mile 345 kV line notice of the proposed route, let alone this proceeding.

In short, not only is there no requirement that ATXI prove to this Commission that it provided notice to all affected landowners, it made no such misrepresentation to the Commission.

4. In the end, the fact that members of a very active citizens' group opposing the project have been able to identify "multiple" affected landowners who were supposedly never notified by ATXI of the project (the exact number and identities of these landowners is still a secret) means little. What difference it would make to this Commission that these landowners have the "opportunity to know how the proposed project will affect their property and discuss their interest prior to the Commission deciding this case"¹⁰ is unclear; after all, the Neighbors are actively defending the positions of the landowners opposing the project. Because it can cite to no statutory, regulatory or common law requirement that notice be provided of this proceeding by ATXI, the most reasonable conclusion as to the purpose of the Neighbors' request is to again delay the project and "make the project more expensive for ATXI."¹¹

While it has absolutely no bearing on the hearing or ATXI's obligations to this Commission, ATXI would welcome the opportunity to provide these landowners with notice of the project should the Neighbors choose to provide their identities. The reality of the situation is that the Neighbors have already provided these landowners notice of the project, and they, like

¹⁰ Neighbors' Reply at ¶ 10.

¹¹ See Neighbors' PowerPoint presentation entitled "Ways to Make the Project More Expensive for ATXI", depicted on page 4 of ATXI's Response in Opposition to Proposed Procedural Schedule of Neighbors United (July 28, 2015). [EFIS Item No. 32].

the current members of the Neighbors, not only already have a specific party (i.e., Neighbors United) representing landowner (and their) interests before the Commission, but are also, like every other citizen of the state, a part of the general public whose interests OPC represents.

Finally, with respect to the Neighbors' contentions in their Motion to Compel unrelated to the notice issue they raise, ATXI would note that the lack of compliance with the Commission's rule on conferring with opposing counsel *in good faith* is even more evident with respect to the Neighbors' Motion to Compel directed toward ATXI than it was with respect to their Motion to Compel directed to MISO, which the Commission just denied.¹² As our original response demonstrates, in most cases the DRs or objections about which the Neighbors complain had been served on the Neighbors weeks before the Neighbors' counsel contacted the undersigned counsel for ATXI on the last day a motion to compel had been filed raising issues about a large number of DRs for which no prior complaint or communication had occurred. As the Commission noted with respect to the motion to compel involving MISO, "this arguably violates the spirit, if not the letter, of Commission Rule 4 CSR 240-2.090(A)."¹³

WHEREFORE, ATXI respectfully requests the Commission enter its orders overruling the Neighbors' request that ATXI be required to provide "proper notice and an opportunity to participate in this case prior to the evidentiary hearing" in this proceeding and that it otherwise deny the Neighbors' Motion to Compel.

Respectfully submitted,

/s/ James B. Lowery

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¹² Order Regarding Motion to Compel at 4 (January 13, 2016). [EFIS Item No. 124]

¹³ *Id.* at 3.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response to the Neighbors Motion to Compel has been e-mailed, this 14th day of January, 2016, to counsel for all parties of record.

/s/ James B. Lowery _____

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