
**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) Case No. EA-2015-0146
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 an Associated)
Substation Near Kirksville, Missouri.)

STAFF'S INITIAL BRIEF

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Case No. EA-2015-0146

STAFF’S INITIAL POST-HEARING BRIEF

Introduction

In this case, as an alternative to its request this Commission disclaim jurisdiction,¹ Ameren Transmission Company of Illinois (“ATXI”) requests a certificate of convenience and necessity from this Commission (state permission) to build what it calls the “Mark Twain project.”² The Mark Twain project is collectively (1) about 95 miles of new 345 kV line that, starting at the Maywood switching station³ near Palmyra, Missouri, runs northwesterly to a new substation located just southeast of Kirksville, Missouri, then northerly to the Iowa-Missouri border, (2) the new substation near Kirksville and (3) an approximately 2.2 miles of 161 kV line to connect the new substation near Kirksville to Union Electric Company’s existing Adair substation

¹ Similarly, pending before the Missouri Western District Court of Appeals in Case No. WD78939 is ATXI’s challenge to the Commission’s jurisdiction over it with regard to that part of the Illinois Rivers project in Missouri it raised in Case No. EA-2015-0145. (ATXI filed its reply brief in that appeal on February 5, 2016.).

² ATXI witness Maureen A. Borkowski, January 25, 2016, hearing, Tr. 5:94-95.

³ Ex. 17, ATXI witness Robert M. Vosberg surrebuttal testimony, p. 5. The Maywood switching station is the western-most end of the Illinois Rivers Project from which an approximately 385-mile long, 345 kV line stretches across Illinois into Indiana. This Commission issued ATXI a certificate of convenience and necessity in Case No. EA-2015-0145 for that switching station and the approximately seven miles of that line in Missouri. See Ex. 50 (Application in Case No. EA-2015-0145).

southwest of Kirksville.⁴ It is part of a portfolio of seventeen projects Midcontinent Independent System Operator, Inc. (“MISO”) approved as multi-value projects in 2011⁵ and affirmed in 2014.⁶

For reasons elaborated later, it is the opinion of the Office of Staff Counsel that the Commission has limited jurisdiction over ATXI and the Mark Twain project. While limited, that jurisdiction is at least sufficient for the Commission (1) to decide whether ATXI has shown it has permissions⁷ from the county commissions of Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri, to cross the public roads and highways in those counties, (2) to decide where to allow the Mark Twain project to be sited in Missouri, (3) to decide what conditions, if any, it should impose to address impacts on Missouri state and local electric systems, and, if ATXI has the required county permissions and the facts show the Mark Twain project is an improvement that justifies its cost, then (4) to issue ATXI a certificate of convenience and necessity for the Mark Twain project, subject to any appropriate conditions.

It is Staff’s opinion that the evidence in this case establishes that, if certain conditions are imposed, the Mark Twain project is “necessary and convenient for the public service”; however, it also establishes that the Mark Twain project will cross public roads and highways in Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri, but that ATXI does not have permission to cross those roads or highways from the

⁴ The Mark Twain project is all of MISO 2011 MTEP multi-value project eight and part of project seven of the total of seventeen projects. See Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, Sch. JTS-1, pp. 34 and 83 (MISO January 10, 2012, Multi Value Project Portfolio Results and Analysis Report, p. 31, Fig. 5.8 and p. 80, Fig. 10.1).

⁵ Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, Sch. JTS-1 (MISO January 10, 2012, Multi Value Project Portfolio Results and Analysis Report).

⁶ Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, Sch. JTS-2 (MISO September 2014, MTEP14 MVP Triennial Review).

⁷ Referred to in statutes and caselaw as “consents,” “assents,” and “franchises.”

county commissions of any of those five counties,⁸ or otherwise from the State of Missouri.⁹ Based on Staff Counsel's research, the Missouri legislature requires that ATXI must have proven to the Commission that it has the permission (assent/consent/franchise) of the county commission of each of those counties to cross the public roads and highways in their county (local consents) **before** the Commission may issue ATXI a certificate of convenience and necessity for the Mark Twain project.¹⁰

Although, Rule 4 CSR 240-3.105(2) allows ATXI the opportunity to provide proof of the required permissions before the Commission grants it a certificate of convenience and necessity, the evidence in this case not only has closed without that proof, it indicates ATXI will not get those permissions.¹¹ In at least one past case with similar circumstances, the Commission dismissed the application.¹²

⁸ ATXI witness Maureen A. Borkowski, January 25, 2016, hearing, Tr. 5:95.

⁹ *Id.*

¹⁰ It is worth noting here that in its reply brief before the Western District in Case No. WD78939 filed February 5, 2016, in the first paragraph on page 17, ATXI states the following: "This is not to say that ATXI is without oversight in the siting and construction of its transmission line from local, state and federal authorities. For example, ATXI has obtained an assent from Marion County under section 229.100 in order for ATXI to hang conductors across county roads. *PSC Brief*, 29, n.15."

¹¹ Ex. 45, Adair, Knox, Marion, Schuyler and Shelby County Commission resolutions opposing the Mark Twain project; Public witness Mark Thompson, Adair County Commissioner, October 27, 2015, Kirksville local public hearing testimony, Tr. 4:127-30.

¹² *Re S.W. Water Co.*, 25 Mo. P.S.C. 637 (Report and Order 1941, on rehearing of Report and Order at 25 Mo. P.S.C. 463).

Argument

Staff's argument, like its position statements, follows the order of the list of issues filed January 15, 2016.

LISTED ISSUES

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

Whether one is a public utility is determined by what one does. The hallmark of a public utility is the offering of utility service to the public without discrimination.¹³ In this case, ATXI is a public utility because it will offer electric transmission service to the public without discrimination.¹⁴ As an owner of transmission lines and substations (electric plant) in Missouri used in connection with the transmission of electricity for light, heat or power, ATXI and the Mark Twain project are within the jurisdiction of this Commission,¹⁵ unless federally preempted.¹⁶ Although the Mark Twain project is primarily for the interstate transmission of electricity, Staff believes the Commission's jurisdiction is neither preempted nor nonexistent.

A copy of *Figure 10.1: 2011 recommended MVP¹⁷ portfolio* from MISO's MTEP¹⁸ 2011 *Multi Value Project Analysis Report* follows:¹⁹

¹³ See *State ex rel. M. O. Danciger & Co. v. Public Service Commission of Missouri*, 275 Mo. 483; 205 S.W. 36, 40; 18 A.L.R. 754 (Mo. 1918).

¹⁴ ATXI witness Maureen A. Borkowski, Tr. 5:95-96.

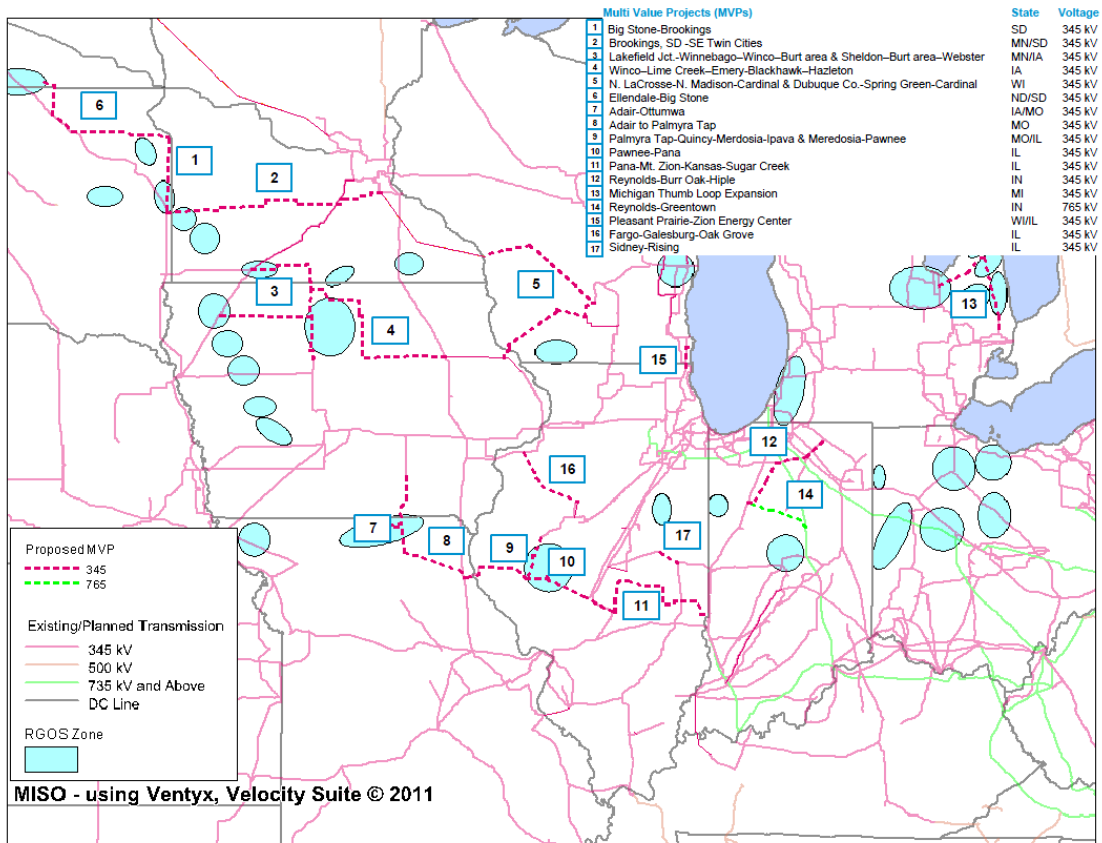
¹⁵ §§ 386.250(1) and 386.020(14), RSMo. (originally §§ 16.5 and 2.12 of the Public Service Commission Act (Laws 1913, pp. 565 and 558, respectively). The word "act" in the bill was replaced with the word "chapter" in the statutes; until 1949, the entire act originally appeared in one chapter.

¹⁶ § 386.030, RSMo.

¹⁷ Multi-Value Project.

¹⁸ MISO Transmission Expansion Plan.

¹⁹ See Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, Sch. JTS-1, p. 83 (MISO January 10, 2012, Multi Value Project Portfolio Results and Analysis Report, p. 80, Fig. 10.1).



The Mark Twain project is MVP 8 and the part of MVP 7 sited in Missouri (the rest of MVP 7 is in Iowa) of the 17 multi-value projects—projects that provide regional public policy, reliability and/or economic benefits—MISO approved collectively in 2011 under Federal Energy Regulatory Commission authority.²⁰ Although part of a larger MISO regional plan, the Mark Twain project is sited in Missouri. MISO’s stated justification for building MVPs 7 and 8, which include the Mark Twain project follows:

The new 345 kV lines from Ottumwa to West Adair to Palmyra will provide an outlet for wind generation in the western region to move toward the more densely populated load centers to the east. In addition to providing a wind outlet, 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. The addition of the 345 kV lines and step down transformer at West Adair is especially

²⁰ *Id.*

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.²¹

The Commission opined in its August 1, 2015, *Revised Order Granting Certificate of Convenience and Necessity* to ATXI for that portion of the Illinois Rivers MISO MVP project in Missouri (part of MTEP 2011 MVP 9) and argues in its January 4, 2016, respondent's brief filed in the Missouri Western District Court of Appeals in Case No. WD78939 on review of that report and order that the federal government has not preempted state permitting or siting of transmission facilities. The Office of Staff Counsel concurs.

This Commission has issued certificates of convenience and necessity for those portions of electric lines sited in Missouri that were being built specifically to move electricity in or out of Missouri in 1948 for a 110 kV line from Dunklin County, Missouri into Clay County, Arkansas,²² in 1967 for a 345 kV line from the Kansas City area to the Minneapolis-St. Paul area,²³ in 1991 to both St. Joseph Light & Power Company and Kansas City Power & Light Company for a 345 kV Cooper-Fairport St. Joseph Interconnection to be constructed and owned by Associated Electric Cooperative (despite St. Joseph Light & Power Company and Kansas City Power & Light Company's assertion they did not need certificates),²⁴ and in 2014 to Transource Missouri, LLC, for

²¹ Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, Sch. JTS-1, p. 34 (MISO January 10, 2012, Multi Value Project Portfolio Results and Analysis Report, p. 31).

²² *Re Arkansas-Missouri Power Company*, 1 Mo. P.S.C. (N.S.) 543 (*Report and Order* October 22, 1948).

²³ *Re Kansas City Power & Light Company*, 13 Mo. P.S. C. (N.S.) 322 (*Report and Order* August 18, 1967).

²⁴ *Re St. Joseph Light & Power Company and Kansas City Power & Light Company*, 1 Mo. P.S.C.3d 44 (*Report and Order* August 28, 1991).

the Sibley-Nebraska City 345 kV line.²⁵ Similarly, the Commission has issued certificates of convenience and necessity for intrastate lines built to sell electricity at wholesale.²⁶ Further, in 1968, the Commission found it had jurisdiction over a complaint The Empire District Electric Company brought against Progressive Industries that, because it did not have a certificate of convenience and necessity, Progressive Industries unlawfully was building an intrastate line to transmit electricity from Springfield to the City of Nixa to serve that city's municipal system.²⁷

In its application ATXI admits that it is a corporation “engaged in the construction, ownership, and operation of interstate transmission lines that transmit electricity for the public use and a part of such transmission lines that ATXI intends to construct, own, and operate will be located in Missouri;” In pertinent part, § 386.020(15), RSMo., defines an “electrical corporation” to “include[] every corporation, . . . owning, operating, controlling or managing any electric plant” and, in pertinent part, § 386.020(14), RSMo., defines “electric plant” broadly so that it “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 . . . , transmission, . . . of electricity for light, heat or power;” As an electrical corporation that intends geographically to expand its operations in

²⁵ *In the Matter of the Application of Transource Missouri, LLC for a Certificate of Convenience and Necessity Authorizing It to Construct, Finance, Own, Operate, and Maintain the Iatan-Nashua and Sibley-Nebraska City Electric Transmission Projects*, Case No. EA-2013-0098 (*Report and Order* August 7, 2013).

²⁶ *Re Union Electric Company of Missouri*, 3 Mo. P.S.C. (N.S.) 86 (*Report and Order* January 15, 1951) (Two 34.5 kV lines and 138/34.5 kV substation “for the sole purpose of selling electric energy to the City of Rolla, Missouri,” *Id.* at 94), and *Re: Union Electric Company*, 14 Mo. P.S.C. (N.S.) 147 (*Report and Order* October 2, 1968) (138 kV line to supply additional electricity at wholesale to Citizens Electric Corporation).

²⁷ *The Empire District Electric Company v. Progressive Industries, Inc.*, 13 Mo. P.S.C. (N.S.) 659 (*Report and Order* April 2, 1968).

Missouri, § 393.170, RSMo., requires that ATXI obtain a certificate of convenience and necessity for that expansion **before** ATXI undertakes it.²⁸

This Commission has authority to issue to ATXI a certificate of convenience and necessity for the Mark Twain project; however, as Staff addresses in its briefing of issue 3, ATXI has not yet met a prerequisite to this Commission issuing ATXI a certificate of convenience and necessity in this case, *i.e.*, it does not have the necessary county commission permissions to cross public roads and highways in Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri. On the record before it in this case, this Commission cannot lawfully issue ATXI a certificate of convenience and necessity for the Mark Twain project.

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 of convenience and necessity ("CCN"), is "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo? Yes, if appropriate conditions are imposed.

In forming its opinion that, with appropriate conditions, the Mark Twain project is "necessary or convenient for the public service," Staff relied on the five categories of considerations the Commission listed in the case *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994), for deciding whether to issue Tartan Energy a certificate of convenience and necessity to provide retail gas service in a number of southern Missouri counties. They are:

²⁸ *Public Service Commission v. Kansas City Power & Light Company*, 325 Mo. 1217, 31 S.W.2d 67 (1930).

- Whether there is a need for the facilities and service;
- Whether the applicant is qualified to own, operate, control and manage the facilities and provide the service;
- Whether the applicant has the financial ability for the undertaking;
- Whether the proposal is economically feasible; and
- Whether the facilities and service promote the public interest.

In the *Tartan Energy* case, the Commission explained that the Commission first stated these five categories in *Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554 (1991), where the Commission canvassed a number of certificate cases and distilled them into these five categories for purposes of deciding whether, and to whom, to issue a certificate of convenience and necessity for an intrastate natural gas pipeline. In its opinion on review of the Commission's *Intercon Gas* decision, the Missouri Western District Court of Appeals said the following:

The PSC has authority to grant certificates of convenience and necessity when it is determined after due hearing that construction is "necessary or convenient for the public service." § 393.170.3. The term "necessity" does not mean "essential" or "absolutely indispensable," but that an additional service would be an improvement justifying its cost. *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W.2d at 219. Additionally, what is necessary and convenient encompasses regulation of monopoly for destructive competition, prevention of undesirable competition, and prevention of duplication of service. *State ex rel. Public Water Supply Dist. No. 8 v. Public Serv. Comm'n*, 600 S.W.2d 147, 154 (Mo.App.1980). The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers. *State ex rel. Ozark Elec. Coop. v. Public Serv. Comm'n*, 527 S.W.2d 390, 394 (Mo.App.1975). Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate. *Id.* at 392.²⁹

²⁹ *State ex rel. Intercon Gas, Inc. v. Public Service Commission*, 848 S.W.2d 593, 597-98 (Mo. App. 1993).

While useful and employed by Staff, the Commission should not rigidly rely on these five categories as a checklist to decide whether the proposed lines and substation are “necessary or convenient for the public service.” Instead, it should assure that it is weighing all of the benefits of the proposed lines and substation against all the costs they cause, particularly those benefits and costs to Missouri.

That these categories are not merely a checklist is exemplified by the Commission’s issuance to UtiliCorp United Inc. of a certificate of convenience and necessity to distribute natural gas in and about Salem, Missouri in 1995.³⁰ In that case, despite Staff’s and Public Counsel’s “assiduously pursued” challenges to the economic feasibility of UtiliCorp United’s plan to provide natural gas service, the Commission found there would be “no significant challenge to the ability of UtiliCorp to operate a safe and efficient gas distribution service,” that “the provision of natural gas service to the Salem area will be in the public benefit, not only as a service to residential customers, but also as an incentive to help promote the economic growth of the economy,” and that “[t]here is little question that UtiliCorp can suffer a complete loss on this project without appreciable damage to its Missouri operation or harm to its ratepayers.”³¹

Staff separately addresses each of the Tartan categories below.

A. Is the Mark Twain Project Needed? Yes.

ATXI has established the need for the Mark Twain project. The Mark Twain project is part of the MVPs in MISO’s 2011 Transmission Expansion Plan.³² The Mark

³⁰ *In the Matter of UtiliCorp United, Inc.*, Report and Order, 4 MoPSC3d 7 (Case No. GA-95-216 decided August 8, 1995).

³¹ *Id.* at 9-10.

³² Ex. 29, Staff witness Lange rebuttal testimony, p. 4.

Twain project is part of the portfolio of seventeen MVPs MISO's Board of Directors approved 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."³³ The Mark Twain project will also provide an additional means by which electricity may be delivered into and from Missouri, particularly from areas rich in wind energy; thereby, not only potentially increasing available wind energy resources for compliance with Missouri's renewable energy standard and compliance with the EPA's clean power plan ("CPP"), but also encouraging the development of wind as an electricity resource in Missouri by increasing the availability of transmission capacity in areas where that resource is available.³⁴

i. MISO MVP Need Bases

The Mark Twain project would resolve several potential reliability issues in northeast Missouri. Reliability continues to be a concern as MISO adds new sources of generation to the current transmission grid configuration. The Mark Twain project design directly addresses reliability concerns stemming from future Missouri Renewable Energy Standard ("RES") and CPP compliance considerations.

MISO stated that 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."³⁵ Further, MISO contends the Mark Twain project "is especially effective in resolving 161 kV line overloads on the lines out of West

³³ Ex. 3, ATXI witness Dennis Kramer direct testimony, p. 5.

³⁴ Ex. 35, MISO witness Jameson T. Smith surrebuttal testimony, pp. 9-12.

³⁵ Ex. 29, Staff witness Shawn E. Lange rebuttal testimony, pp.7-8 ("NERC Category C events resulting in the loss of two or more elements," http://www.nerc.com/files/TPL-001-0_1.pdf p. 4.).

Adair during certain NERC Category C events³⁶[,]...will mitigate two bulk electric system (“BES”) NERC Category B thermal constraints and five NERC Category C constraints[,],...and relieve three non-BES NERC Category B and two NERC Category C constraints.³⁷ Staff agrees with MISO that the Mark Twain project will mitigate and/or relieve the NERC Categories B and C constraints, so long as the level and location of wind remains consistent with MISO’s modeling.³⁸

In addition, Staff agrees with ATXI witness Dennis Kramer’s assertion that the Mark Twain project “will also increase reliability in the Northeast portion of Missouri, including the Kirksville area.”³⁹ If built, the Mark Twain project would allow the areas it covers in northeast Missouri to “maintain voltage levels if certain NERC Category C contingencies were to happen under certain system conditions.”⁴⁰

ii. Compliance with the Missouri RES Need Basis

As required by § 393.1030, RSMo, the Commission, by rule,⁴¹ requires Union Electric Company d/b/a Ameren Missouri, The Empire District Electric Company, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company to generate or purchase electricity generated from renewable energy resources, or to purchase the attribute of being generated from a renewable energy

³⁶ Ex. 29, Staff witness Shawn E. Lange rebuttal testimony, pp.7-8

³⁷ *Id.* (<https://www.misoenergy.org/Library/Repository/Study/MTEP/MTEP11/MTEP11%20Report.pdf>, p. 31.).

³⁸ *Id.* at p. 8.

³⁹ Ex. 3, ATXI witness Dennis Kramer direct testimony, p. 11.

⁴⁰ Ex. 29, Staff witness Shawn E. Lange rebuttal testimony, p. 8.

(<https://www.misoenergy.org/Library/Repository/Study/Candidate%20MVP%20Portfolio%20Analysis%20Full%20Report.pdf>, p. 31.).

⁴¹ Rule 4 CSR 240-20.100.

resource, as percentages of their total electricity sources.⁴² The requirements pertinent to this case are: No less than five percent (5%) in each calendar year 2014 through 2017; no less than ten percent (10%) in each calendar year 2018 through 2020; and no less than fifteen percent (15%) in each calendar year beginning in 2021, of which not less than two percent (2%) must be sourced from solar energy, *i.e.*, the solar sourced requirement of the total sources must be no less than one-tenth percent (0.1%) in each calendar year 2014 through 2017; no less than two-tenths percent (0.2%) in each calendar year 2018 through 2020; and no less than three-tenths percent (0.3%) in each calendar year beginning in 2021.⁴³

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.⁴⁴ Ameren Missouri anticipates that its current resources will not allow it to meet its renewable energy standards requirements after 2018,⁴⁵ but it plans to acquire 400 MW of wind capacity, starting in 2019 and have it in place by 2026.⁴⁶ The Mark Twain project could help enable Ameren Missouri to comply with its renewable energy standards requirements and with the EPA's CPP.⁴⁷

⁴² There is a cost exception from full compliance with the renewable energy source percentage requirements. Rule 4 CSR 20.100(2)(C).

⁴³ Rule 4 CSR 20.100(1)(R), (2).

⁴⁴ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 6-7.

⁴⁵ Case No. EO-2015-0084, Ameren Missouri's 2014 Integrated Resource Plan filed October 1, 2014, Ch. 9, p. 6 (Commission took official notice of the entire case file, Tr. 7:373-75).

⁴⁶ *Id.* at Ch. 1, § 1.5, p. 12; Ex. 12, ATXI witness Matt Michels surrebuttal testimony, p. 15.

⁴⁷ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 6-9.

iii. Compliance with the Clean Power Plan Need Basis

The CPP also provides incentive for building the Mark Twain project by encouraging expansion of non-carbon-based resource generation. As wind generation is one of the least cost options for no-carbon emission resources,⁴⁸ wind farm development will likely receive the most interest to meet CPP requirements. Because of the recent Supreme Court stay of the CPP compliance dates and because the State of Missouri has not concluded what form its State Implementation Plan will take, there is still uncertainty about how the CPP will ultimately affect Missouri electric utilities.⁴⁹ Nevertheless, the addition of the Mark Twain project would limit the uncertainty by providing an opportunity to locate wind generation within the state near a transmission line, and allowing the opportunity to import and export renewables from and to other states.⁵⁰

iv. Potential for Wind Development Need Basis

There is considerable anticipation for wind generation and development in northeast Missouri due to two primary reasons: the Mark Twain project's proximity to the Adair Wind Zone, and wind's relative lower cost as a source of renewable energy generation.

First, the Adair Wind Zone presents wind farm siting opportunities due to its topography and wind speeds.⁵¹ MISO conducted a study, evaluating, among other things, "optimal wind conditions," with the intent to "optimize wind generation

⁴⁸ Ex. 12, ATXI witness Matthew Michels surrebuttal testimony, pp. 8–10.

⁴⁹ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 8.

⁵⁰ *Id.*, pp. 8–9.

⁵¹ Ex. 17, ATXI witness Robert Vosberg surrebuttal testimony, p. 7.

placement.”⁵² With the characteristics of the Adair Wind zone, combined with the proposed Mark Twain project’s proximity to it and 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.⁵³

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.⁵⁴ Moreover, the Production Tax Credit, originally scheduled to expire at the end of 2016, was extended until 2019.⁵⁵ The credit encourages future wind development by providing a tax credit to wind developers for a generation project started by the end of 2019.⁵⁶

The location of the Mark Twain project 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 the Mark Twain project. As discussed by ATXI Witness Dennis Kramer during the hearing, 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.⁵⁷ As wind is developed as a generation resource in northeast Missouri, the need for the means to transmit the electricity it generates will only increase.

⁵² Ex. 29, Staff witness Shawn Lange rebuttal testimony, p. 6.

⁵³ Ex. 17, ATXI witness Robert Vosberg surrebuttal testimony, pp.6-7.

⁵⁴ Ex. 12, ATXI witness Matthew Michels surrebuttal testimony pp. 8 – 10.

⁵⁵ ATXI witness Matthew Michels January 26, 2016, hearing, Tr. 7:512–513.

⁵⁶ *Id.*

⁵⁷ ATXI witness Dennis Kramer, January 25, 2016, hearing, Tr. 5:203–204.

B. Is Ameren Transmission Company of Illinois qualified to own, operate, control and manage the Mark Twain project? Yes.

As Staff witness Daniel I. Beck summarizes in his testimony, ATXI's executive and available human resources show that it has the qualifications needed to own, operate, control and manage the Mark Twain project.⁵⁸ 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 2005,⁵⁹ primarily with regard to activities relating to transmission. 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 the Mark Twain project.⁶⁰ David Endorf, MSCE, PE (Missouri and Illinois), is employed by Ameren Services Company to design transmission line projects for Ameren affiliates, including the Mark Twain project.⁶¹ 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.⁶² In addition to providing personnel who are planning, executing, completing and carrying out the

⁵⁸ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 10-11.

⁵⁹ Ex. 1, ATXI witness Maureen A. Borkowski direct testimony, pp. 1-2.

⁶⁰ Ex. 19, ATXI witness James Jontry direct testimony, pp. 1-2.

⁶¹ Ex. 13, ATXI witness David Endorf direct testimony, pp. 1-2.

⁶² Ex. 3, ATXI witness Dennis D. Kramer direct testimony, pp. 1-4.

operational integration of the Mark Twain project, ATXI has access to Ameren Services Company personnel who will operate and maintain the Mark Twain project.⁶³

C. Does Ameren Transmission Company of Illinois have the finances to undertake the Mark Twain project? Yes.

ATXI is financially qualified to fund the Mark Twain transmission line project. ATXI is a subsidiary of Ameren Corporation (“Ameren”).⁶⁴ As Staff witness David Murray notes, “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 in Ameren Missouri and Ameren Illinois”⁶⁵ Further, as of June 30, 2015, Ameren still had \$364 million of direct borrowing capacity.⁶⁶ Simply based on Ameren’s remaining borrowing capacity, ATXI has the ability to raise the projected \$224 million of capital needed for the Mark Twain project.⁶⁷

D. Is the Mark Twain project economically feasible? Yes.

As Staff witness Michael L. Stahlman summarizes in his testimony, it is Staff’s position that the Mark Twain project is economically feasible because ATXI will receive payments for the construction and operation of the project through MISO’s Open Access Transmission Tariffs.⁶⁸

Generally, ATXI asserts that the Mark Twain project is economically feasible because the project was developed through MISO’s MVP study process.⁶⁹ ATXI witness Todd Schatzki, Ph.D., states in his direct testimony that, “the Project was developed as

⁶³ Ex. 1, ATXI witness Maureen A. Borkowski direct testimony, pp. 4.

⁶⁴ Ex. 31, Staff Witness David Murray rebuttal testimony, p. 2.

⁶⁵ *Id.*

⁶⁶ *Id.* at p. 3.

⁶⁷ *Id.*

⁶⁸ Ex. 32, Staff witness Michael L. Stahlman rebuttal testimony, p.2.

⁶⁹ Ex. 21, ATXI witness Todd Schatzki, Ph. D. direct testimony, p. 4, ll. 10-14, p. 8, ll. 13-17.

an element of a cost-effective approach to achieving state renewable targets, while providing other economic and reliability benefits, thus indicating ‘economic feasibility.’”⁷⁰ While MISO’s MTEP 2011 *Multi Value Project Analysis Report* and the MTEP14 MVP Triennial Review support a determination that the proposed portfolio of projects are in the public interest, they do not demonstrate economic feasibility of the Mark Twain Transmission project.⁷¹ As Staff witness Stahlman explained during the hearing, Staff reached its conclusion on economic feasibility independent of the MISO study results.⁷² The Mark Twain project will be economically feasible because it will be funded through MISO Open Access Transmission Tariffs,⁷³ providing ATXI a reasonable opportunity to recover its costs.

E. Does the Mark Twain project promote the public interest? Yes.

i. MISO MVP

Staff recommends that the Commission find the Mark Twain project is in the public interest.⁷⁴ “Positive findings with respect to the other four [Tartan] standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest.”⁷⁵ Staff views that, for the Mark Twain project, ATXI has met the other four Tartan standards.

In addition, the Mark Twain project is part of the MTEP MVPs MISO approved in 2011.⁷⁶ MISO studied the operational impacts of the Mark Twain project and estimated

⁷⁰ *Id.* at p. 8, ll. 15-17.

⁷¹ Ex. 32, Staff witness Michael L. Stahlman rebuttal testimony, p. 3, ll. 13-16.

⁷² Staff witness Michael L. Stahlman, January 27, 2016, hearing, Tr. 9:683, ll. 9-12.

⁷³ *Id.* at p. 683, ll. 12-14.

⁷⁴ Ex. 64, Staff witness Sarah L. Kliethermes rebuttal testimony, p. 3.

⁷⁵ *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173 (1994).

⁷⁶ Ex. 64, Staff witness Sarah L. Kliethermes rebuttal testimony, p. 3.

the appropriately balanced overall cost-benefit ratio for the MVP portfolio for the areas of Missouri located in the MISO region to be 2.0-2.9.⁷⁷ In 2014, a required triennial review of the 2011 MTEP, including the Mark Twain project, increased the projected cost-benefit ratio of the areas of Missouri located in the MISO region, where the Mark Twain project is located, to be 2.3-3.3.⁷⁸ Staff believes that the Mark Twain project will produce an overall net benefit as evidenced by MISO's positive cost-benefit ratio projection.⁷⁹

The Commission should not, however, rely on implications made by ATXI witness, Dr. Todd Schatzki, in support of its claim of public interest that the Mark Twain project would reduce Missouri's retail electric rates, or that the Mark Twain project would reduce environmental emissions in Missouri.⁸⁰ A proper estimation of the retail rate or emissions impact requires a more narrowly-tailored production modeling to estimate how many hours a specific plant in a particular generation fleet will run at what net profit under normal conditions.⁸¹ As the modeling performed by Dr. Schatzki falls short of that standard, the Commission should not rely on his evidence on the issues of retail rate impact and projected emissions impact. Staff's recommendation that the Mark Twain project serves the public interest is based on the standards outlined in the preceding paragraph, and without consideration of the retail rate or emissions impact projections of Dr. Schatzki.

⁷⁷ *Id.* at p. 4.

⁷⁸ *Id.* at p. 4. The initial cost-benefit ratio of the MVP portfolio from the 2011 analysis was an estimated range of 2.0-2.9 for the areas in Missouri located in the MISO region.

⁷⁹ A cost-benefit ratio of greater than one (1) indicates that the benefits outweigh the costs. *Id.*

⁸⁰ *Id.* p. 3.

⁸¹ *Id.* pp. 5-6. To accurately estimate the cost and revenue rate impact of a major transmission line addition requires a production model and cost of energy analysis similar to those used in an electric utility rate case.

ii. Other Considerations

Staff considers potential impacts to public health and welfare as part of the public interest. Neighbors United raised the issue of whether EMFs affect public health. Staff believes the evidence rebutting those concerns is persuasive.

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? Yes. If so, does the evidence establish that ATXI has made that showing? No.

The evidence in this case establishes that ATXI does not have county commission permissions for the Mark Twain project to cross public roads and highways.⁸² It also conclusively establishes that ATXI does not have any independent state permission to cross them.⁸³

Prior to when the Public Service Commission Act became law on April 15, 1913, if it was going to use the public thoroughfares in Missouri to provide electricity, then a public electric utility had to obtain permission from the cities, towns, villages, or counties within which it would use those thoroughfares.⁸⁴ Obtaining that permission did not change with passage of the Public Service Commission Act, which expressly makes such permission a prerequisite to the Commission issuing a certificate of convenience and necessity:

⁸² ATXI witness Maureen A. Borkowski, January 25, 2016, hearing, Tr. 5:95.

⁸³ *Id.*

⁸⁴ § 9947, RSMo. 1909 (cities, towns, and villages) and § 10515, RSMo. 1909 (Counties), as amended now §§ 71.520 and 229.100, RSMo., respectively.

Before such certificate [of convenience and necessity] shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

Laws 1913, pp. 610-11, Public Service Commission Act, § 72, s. 3; § 393.170.2, s. 2, RSMo. 2000.

Currently, the requirement of county permission is codified at § 229.100,

RSMo., which provides:

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.⁸⁵

Demonstrating it intended local control, the Legislature, when it first passed this statute in 1901 and then when it amended it in 1907, stated, respectively, the following:

Sec. 2. The fact that in certain counties in this state, poles for suspension of electric light wires and pipes, conductors, mains and conduits are being erected, laid and maintained on the public roads and highways, without the consent of the several county courts of such counties, and the fact that doubt exists of the power of such county courts in the premises, creates an emergency within the constitution; and therefore, this act shall take effect and have force from and after its passage.

⁸⁵ Since 1907 the only revision to the language of this statute requiring county assent has been to change “county court” to “county commission” and to include the last clause (which addresses control of the scope of the use: “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”) as replacement for the following language: “so as to in any manner interfere with the ordinary traffic and public use of such road and highway.” Laws 1907, pp. 410-11. And the only revision in 1907 of the original 1901 act was to add the words “or power” after “light” and before “wires.” *Id.*

Approved March 19, 1901.⁸⁶

and

Sec. 2. The fact that in certain counties in this state, poles for suspension of electric light or power wires and pipes, conductors, mains and conduits are being erected, laid and maintained on public roads and highways, without the consent of the several county courts of such counties, and the fact that doubt exists of the power of such county courts in the premises, creates an emergency within the Constitution; and therefore, this act shall take effect and have force from and after its passage.

Approved March 20, 1907.⁸⁷

That the Legislature intended such local control is reinforced by the history the Commission provided in its 1915 Report and Order in *Re Kansas City Railways Company*, 3 Mo.P.S.C. 593.⁸⁸ There, the Commission, in a case of first impression, when addressing its authority to approve, among other things, a reorganization to unify the complete street railway systems in and about Kansas City, Missouri, and to certificate the reorganized street railway company to operate in and about Kansas City, said:

The power sought to be exercised here is a pure state police power, and is therefore unquestionably within the exclusive jurisdiction of the state to be exercised by appropriate state agencies, the exercise of which is limited, if at all, by section 20 of article XII of the Constitution.

That section reads:

No law shall be passed by the general assembly granting the right to construct and operate a street railroad

⁸⁶ Laws 1901, p. 233.

⁸⁷ Laws 1907, p. 411.

⁸⁸ One of the Commissioners in that case was Eugene McQuillin, formerly a Missouri circuit judge who first authored *McQuillin on Municipal Corporations*, which is "considered the definitive work in the area," and which the Missouri Supreme Court has cited as an authority.

within any city, town, village or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained.⁸⁹

This provision first appears in our Constitution of 1875. Until the adoption of the Constitution of 1865 such franchises were granted by the general assembly by special act without consent and often against the protest of the local authorities and the people of the several local communities of the state. The Constitution of 1865 prohibited the creation of corporations by special act, except for municipal purposes. In deference to the principle of home rule, or local self-government, then vigorously advocated in many jurisdictions, and as a result of such advocacy, found expression in state organic laws, by the Constitution of 1875, the consent of the local authorities was made a condition precedent to granting the right to construct and operate. The purpose of the provision was to give the local authorities of cities, towns, villages and local communities of the state unrestricted power to say whether street railways should or should not be constructed and operated in their respective localities. In expression the provision is direct, unequivocal, peremptory and unlimited. In apt words, the entire consent is vested exclusively in the local authorities and taken from the general assembly. .

. . .

Id. at 611-12.

That both the Missouri Supreme Court and this Commission view local consents as preconditions to certificates is shown by the following opinions, and reports and orders:

⁸⁹ *Id.* at 611. Mo. Const. of 1875, art. XII, § 20. The current section follows: “No law shall grant the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway, and the franchises so granted shall not be transferred without similar assent first obtained.” Mo. Const. art. XI, § 11.

Court Cases

1. *Public Service Commission v. Kansas City Power & Light Company*, 325 Mo. 1217, 31 S.W.2d 67 (1930) (In response to Kansas City Power & Light Company's argument that it had had a county franchise for many years and was operating in that county under authority of the commission, the Court responded that a franchise does not allow operation of new electric line without a Commission certificate of convenience and necessity for operation of that line, and utility admitted it did not have such a certificate).

2. *State ex inf. Shartel ex rel. City of Sikeston v. Missouri Utilities Company*, 331 Mo. 337, 53 S.W.2d 394 (1932), where the Court, when affirming judgment denying to oust the utility from the city after its franchise expired, said:

Under sections 4962 and 7683, R. S. 1929 (Mo. St. Ann. §§ 4962, 7683), municipal authorities may, under such delegated power, grant or refuse permission to electrical companies to place appliances in public ways within their corporate limits. [*Seventh Street Realty & Power Co. v. St. Louis*, 282 Mo. 180, 190, 221 S. W. 51.](#) ***However, the state as the sovereign power may condition the exercise of a privilege granted by one agency upon approval of another. Such was done in the passage of the Public Service Commission Act, particularly instanced in the commission's authority to grant or withhold certificates of convenience and necessity requested by electrical corporations as provided in section 72 (Laws 1913, pp. 610, 611), now section 5193, R. S. 1929 (Mo. St. Ann. § 5193)***

* * * *

But sections 4962 and 7683, supra, plainly make the consent of the municipality, in manner and form there indicated, an essential prerequisite to lawful exercise of the rights therein mentioned, and we find nothing in the Public Service Commission Act or in our decisions construing the same that lends any substantial support to respondent's suggestion that this statutory requirement has been repealed, or that the commission's grant of a certificate of public convenience and necessity is a grant of any privilege, franchise, or right which municipalities, as agents of the state, are empowered to grant or withhold at their pleasure. (Emphasis added). As said in [*Bethlehem C. W. Co. v. Pub. Serv. Com.*, 70 Pa. Super. Ct. 499, 501:](#) "In granting a certificate of public convenience the commission confers no new chartered powers on any company. It takes away from no company any right or power then legally existing. As it is not a judicial body but an

administrative one, its order, made from the standpoint of the public convenience solely, cannot be made the foundation for the judicial determination of what franchises do or do not belong to any corporation interested. Such matters must be determined as heretofore in a legal proceeding properly instituted in the courts for that purpose.”

Also, in [Wilson v. Publ. Serv. Com., 89 Pa. Super. Ct. 352, 358, 359](#), the court said: “If an electric company, incorporated under or accepting the provisions of the Act of 1889, supra, does not for any reason possess the right of eminent domain, or does not procure when necessary proper municipal consent, the order of the Commission approving an application under the Act of 1921 does not and could not cure any such defect.” See, also, 51 C. J. p. 41, § 79, notes 67, 68, 69, 72, 73, and page 52, § 95, notes 28, 29.

So, even though relator has not questioned the commission's jurisdiction to make the order purporting to authorize respondent to operate its electric plant at Sikeston, which is referred to in respondent's return and answer as a certificate of public convenience and necessity, yet the effect of such order could not extend beyond ***the scope of the commission's power in the particular proceeding culminating therein, which was to determine the single question of whether the proposed exercise of the right, privilege, or franchise was “necessary or convenient for the public service.” This order did not confer any new powers upon respondent. It simply permitted respondent to exercise the rights and privileges presumably already conferred upon it by state charter and municipal consent.*** (Emphasis added).

331 Mo. at 347-51, 53 S.W.2d at 397-99.

3. *State ex rel. City of Sikeston v. Public Service Commission of Missouri*, 336 Mo. 985, 82 S.W.2d 105 (1935) (Court affirmed Commission's denial of the City of Sikeston's request to find Missouri Utilities Company was no longer authorized by the Commission to provide electric service in Sikeston). In its opinion the Court said the following:

The commission held that . . . the grant of such certificate [of convenience and necessity] to an electrical corporation is only required and authorized in case of, ***“First, the beginning of construction of an electric plant; second, the commencing to exercise any right or privilege under any franchise”*** (Emphasis

added.) (section 5193, R. S. 1929 [Mo. St. Ann. § 5193, p. 6617]) . .

..

* * * *

. . . . The Public Service Commission Law was intended to prevent overcrowding of the field in any city or area and thus “restrain cut-throat competition upon the theory that it is destructive, and that the ultimate result is that the public must pay for that destruction.” [State ex rel. Union Electric Light & Power Co. v. Public Service Commission, 333 Mo. 426, 62 S.W.\(2d\) 742, 745.](#) **To accomplish this the commission was given the authority to pass upon the question of the public necessity and convenience for any new or additional company to begin business anywhere in the state, or for an established company to enter new territory.** (Emphasis added).

336 Mo. at 996-97, 82 S.W.2d at 109-10.

Commission Reports and Orders

1. *In Re Lanagan Telephone Company*, 8 Mo.P.S.C. 597. (Report and Order 1919) (After hearing the case, the Commission did not issue a certificate of convenience and necessity until a required county franchise was filed with it).⁹⁰
2. *In Re Missouri-Kansas Pipe Line Company*, 17 Mo.P.S.C. 98 (Report and Order 1928) (Certificate of convenience and necessity withheld pending showing of franchise).⁹¹

⁹⁰ “In no event can such certificate of convenience and necessity be issued by the Commission until the applicants file in the office of the Commission a verified statement showing that the required consent of the proper municipal authorities has been obtained. We construe that to mean that in the instant case [(where the applicants proposed exchanges in Lanagan and Pineville with a toll line between them)] the applicants will be required to file with the Commission the evidence of the granting of authority by the County Court for the construction of the proposed telephone exchanges and the use of the highways incident to the construction and operation of the same.

Under all the evidence in this case the Commission will grant a certificate of convenience and necessity to applicants to construct and operate a telephone exchange at Lanagan and to build a toll line to Pineville upon filing evidence of consent of the proper municipal authorities. . . .” 8 Mo.P.S.C. at 602-03.

⁹¹ “The applicant however, has not filed with the Commission as is required under Section 72 of the Public Service Commission Law [(precursor to § 393.170, RSMo.)], proper evidence showing that it has received the consent of the municipal authorities for its proposed pipe lines, therefore the certificate prayed for will be withheld until such time as the requirements of the statutes are met.”

3. *In the Matter of the Application of Missouri Public Service Corporation*, 23 Mo.P.S.C. 740, 741-46 (Report and Order 1938).⁹² (Because a Livingston county franchise was a prerequisite to including an area in Livingston County in its certificate of convenience and necessity, the Commission did not include that area in the certificate of convenience and necessity it issued).
4. *Re S.W. Water Co.*, 25 Mo. P.S.C. 637, 638 (Report and Order 1941, on rehearing of Report and Order at 25 Mo. P.S.C. 463) (Commission dismissed application because water company did not have franchise from Jackson County). In its Report and Order the Commission said:

The protestant submitted additional evidence concerning its status as well as showing that since the first hearing of this case, the County Court of Jackson County has again refused to give its

⁹² "As a condition precedent to the granting of a certificate of convenience and necessity by this Commission in any of the towns now served, or for the construction of electric lines along certain routes in the above counties, the applicant has presented to the Commission proof that it had received the required consent of the proper municipal authorities or orders of the respective county courts for the location of the proposed pole line or lines along and across the streets, roads and highways of said incorporated or unincorporated areas, as the jurisdiction of the local authorities may require.

* * * *

In Livingston County the applicant does not have authority from the county court to locate its lines as it may desire along the highways of that county, so without such consent of local authority it does not include in its petition a request for a certificate of convenience and necessity for that county, but asks that [the] Commission declare the line it has shown in its exhibit, and proposes to have it as a matter of record, as outlining the area in Livingston County wherein it should be expected to operate and extend service as against other public utilities which are now operating and may be called upon to serve the remaining portions of the county. As we mentioned above, it now has a line in that area, the northwestern part of Livingston County, and is operating a distribution system in the town of Chula. For these it has been granted, from time to time, certificates of convenience and necessity for the construction of the lines it now has in operation and for the operation of those lines.

. . . . It was apparent at the hearing that the applicant was not in a position to present a request for any authority of any kind concerning its operations in Livingston County, and in reviewing the evidence submitted the Commission now finds that in view of Section 5193 of the 1929 Revised Statutes of Missouri, the applicant was in no position to present any request for authority to operate in Livingston County. It is now operating at certain points in that county, but should it desire to extend its lines, our understanding of the law is that it will be required to seek a certificate of convenience and necessity for any further extension, and as a condition precedent to the granting of such authority, it must show that it has received the consent of the county court either for the specific line or for a prescribed area, as the court may determine. Our view of the position of the applicant in this case insofar as Livingston County is concerned is that the applicant can only ask to have the record show the area in which it professes its willingness to furnish the service should anyone want it and the conditions warrant the extension. The Commission has no power to grant any right or privilege upon such request. Nothing further need be said on that point in this case." 23 Mo. P.S.C. at 742-43. The Western District Court of Appeals addressed this same certificate in *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177 (Mo. App. 1960), [Stopaquila.Org v. Aquila, Inc., 180 S.W.3d 24 \(Mo.App. 2005\)](#), and *State ex rel. Cass County v. Public Service Commission*, 259 S.W.3d 544 (Mo. App. 2008).

consent to the applicant to lay or maintain its water mains or lines along and across the streets and roads of Jackson County.

Without that consent the applicant contends and argues in its brief that Section 5193, Mo. R. S. 1929 (Sec. 5649, Mo. R. S. 1939) does not require that "consent of the proper municipal authorities" is a condition precedent to the granting of a certificate of convenience and necessity for the construction, maintenance and operation of a water system as a public utility in an unincorporated area in this state. It contends that section is confined to areas within the corporate limits of incorporated cities, towns and villages. Protestant's brief contends to the contrary. The case now hinges on that point.

An examination of the findings of this Commission for many years back will show that the Commission has consistently required a showing that the applicant has secured the consent of what is considered proper municipal authority before granting authority to own, lease, construct, maintain and operate any water, gas, electric or telephone system as a public utility. Consent of the city, town, village, the County Court or the State Highway Commission depending upon whether the line or system was to be placed within the incorporated city, within the unincorporated area of the county, or along a state highway, has always been made a condition precedent to the granting of such certificate by this Commission. We find nothing in this case convincing us the former findings have been in error. We find our former disposition of this case is correct.

Re S.W. Water Co., 25, Mo. P.S.C. 637, 638 (Report and Order on rehearing of Report and Order at 25 Mo. P.S.C. 463).

5. *Re Union Electric Company of Missouri*, 3 Mo. P.S.C. (N.S.) 157 (Report and Order 1951) (When dismissing Union Electric Company's application for authority to exercise rights and privileges described in municipal ordinances, since Union Electric Company already had that authority under a prior county franchise and existing Commission certificates of convenience and necessity, in its Order, the Commission stated, "At all times here involved, the county courts were authorized (Laws, 1901, p. 233, now Section 229.100, RSMo. 1949) to grant franchises for the construction and maintenance of electric facilities on, under and across the public roads and highways of the county, and the cities, towns and villages of the county also were authorized to grant franchises of like import. (Section 1341, R. S. Mo. 1899, now Section 393.010, RSMo. 1949 and Section 6501, R. S. Mo. 1899, now Section 71.520, RSMo. 1949.) Such last named

franchises are a prerequisite to the right to serve in such cities, towns and villages as were incorporated and in existence when a county court franchise was granted. It is otherwise in cases wherein the cities, towns and villages were incorporated after the county court had granted franchises covering unincorporated territory of the county which was subsequently enveloped in the boundaries of the newly created and incorporated city, town or village and when the holder of the county franchise had begun operations in such territory under the county franchise prior to the creation of the municipality. In such cases the county court franchises constitute 'the proper municipal authorities' as the term is used in Section 393.170, *ibid*, and the proper support for granting the certificates of convenience and necessity. The fact that some of these twelve municipalities were created and incorporated prior to 1922 and 1923 when we granted the certificates of convenience and necessity is immaterial, as our next section hereof will demonstrate." *Id.* at 160.)

6. *Re: Central Missouri Gas Company*, 8 Mo.P.S.C.(N.S.) 340 (Report and Order 1958) (Commission issued preliminary certificate of convenience and necessity to provide gas service in and about the cities of Lancaster, Queen City and Greentop, Missouri, when the mayors, council members and businessmen of the cities had assured that the proper municipal consents would be given that would not become "final and effective" until proof of the consents was filed with the Commission).
7. *Re: Frimel Water System, Inc.*, 11 Mo.P.S.C. (N.S.) 839, 844 (Report and Order 1964) ("Conditional" certificate issued, with "final" certificate to issue upon conditions being met, including county franchise).
8. *Re: National Development of Clay County, Inc., et al.*, 12 Mo. P.S.C. (N.S.) 199, 206 (Report and Order 1965) (Preliminary and conditional certificate issued to become permanent upon obtaining Kansas City franchise; made permanent upon filing of motion and agreement which the city had executed, 12 Mo. P.S.C. (N.S.) 207-09 (Supplemental Report and Order).
9. *Re: Gray Summit Water Company*, 13 Mo. P.S.C. (N.S.) 536, 548 (Report and Order 1968) (Conditional certificate, conditioned on showing of franchise or certified statement such consent unnecessary).
10. *Re: Saline Sewer Company*, 15 Mo. P.S.C. (N.S.) 25, (Report and Order 1970) (Certificate issued upon showing within three months, *inter alia*, county franchise, dismissed otherwise).

11. *Re: Bonneville Water*, 20 Mo. P.S.C. (N.S.) 240 (Report and Order 1975) (Conditional certificate, conditioned, *inter alia*, on showing within 90 days of required consent of municipal authorities).

While researching published Commission reports and orders on the issue of county consent as a prerequisite to a certificate of convenience and necessity, Staff counsel found many cases where the applicant had the required municipal or county consent, but the Commission did not mention that consent was a prerequisite to it issuing a certificate of convenience and necessity. Also, in researching the issue, Staff counsel found two reported Commission cases, where the Commission did not specifically state in its report and order that the prerequisite was met, or, after acknowledging it, chose to ignore it. They are described in following two paragraphs.

In its November 3, 1958 Report and Order the Commission stated that Grand River Mutual Telephone Company had obtained some of the municipal franchises it needed, but in its January 19, 1959, Report and Order by which the Commission issued Grand River Mutual Telephone Company a certificate of convenience and necessity to provide telephone service in and about Lone Star, Gentry, Ravenwood, Denver, Parnell, Darlington, Alanthus, Worth and New Hampton, Missouri, the Commission was silent regarding whether Grand River Mutual Telephone Company had obtained the remainder of the franchises.⁹³

In a 1962 Report and Order the Commission acknowledged the prerequisite of franchises, then ignored full compliance with it by issuing Midstate Telephone Company a certificate of convenience and necessity to provide improved telephone service by

⁹³ *Re: Grand River Mutual Telephone Corporation*, 8 Mo. P.S.C. (N.S.), 407 (Report and Order 1959) and 315 (Report and Order 1958).

exchanges located at Brazito, Centertown, Schubert and New Bloomfield, Missouri, although Midstate Telephone Company did not show it had franchises from Brazito or Schubert, Missouri). In its Report and Order the Commission stated:

The Commission is now of the opinion that the public should not be required to wait for Applicant to obtain franchises in all of the points involved in the original hearing before beginning construction, especially since Applicant has expressed the desire to go forward with providing telephone service to the public at points for which funds are now available.⁹⁴

Conclusion

The inescapable conclusion is that the Commission cannot lawfully issue ATXI a certificate of convenience and necessity for the Mark Twain Project before ATXI obtains the county consents necessary for that project and proves them to the Commission, by filing a verified statement of its president and secretary that it has them, or by other sufficient proof, such as originals or copies of them. The unrefuted live testimony of ATXI's President, Maureen A. Borkowski, is that not only does ATXI not have consents of the county commissions of Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri, to cross the public roads and highways in their counties, it does not have any other consent from the State of Missouri to do so.⁹⁵ The Commission cannot lawfully issue ATXI a certificate of convenience and necessity for the Mark Twain project in this case.

⁹⁴ *Re: Midstate Telephone Company*, 10 Mo. P.S.C. (N.S.), 454, 456 (Report and Order 1962).

⁹⁵ ATXI witness Maureen A. Borkowski, January 25, 2016, hearing, Tr. 5:95.

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

Section 393.170.3, RSMo., empowers the Commission to “by its order [issuing a certificate of convenience and necessity] impose such condition or conditions as it may deem reasonable and necessary.” Staff recommends that the Commission impose the following six conditions.⁹⁶ These, or similar conditions, are essential to Staff’s recommendation that the Commission find the Mark Twain project is “necessary and convenient for the public service.” ATXI agrees to them.⁹⁷

1. That Ameren Transmission Company of Illinois file with the Commission in this case all required approvals and permits—e.g., land disturbance permits, Missouri State Highway Commission permits, US Fish & Wildlife permits, and EPA permits—before beginning construction on that part of the Mark Twain project where the approvals and permits are required. Commission rule 4 CSR 240-3.105(1)(D).⁹⁸
2. That throughout the right-of-way acquisition process, Ameren Transmission Company of Illinois 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 scenario: If surveys or testing do not necessitate a deviation, Ameren Transmission Company of Illinois may deviate from the depicted route on a particular

⁹⁶ Staff’s positions on the listed issues filed January 20, 2016, pp. 6-9.

⁹⁷ ATXI’s positions on the listed issues filed January 20, 2016, pp. 12-14.

⁹⁸ Staff witness Daniel I. Beck, Tr. 10:724-29, 739-40, 755-56; Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 15-17; Staff’s positions on the listed issues filed January 20, 2016, pp. 6-7.

parcel if Ameren Transmission Company of Illinois and the landowner agree, e.g., upon request of the landowner and Ameren Transmission Company of Illinois's agreement with the request.

Second scenario: if Ameren Transmission Company of Illinois determines that surveys or testing require a deviation, Ameren Transmission Company of Illinois 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.

Further, with respect to any parcel other than the 377 identified parcels where Ameren Transmission Company of Illinois determines that testing or surveys necessitate acquisition of an easement on that parcel, Ameren Transmission Company of Illinois will negotiate in good faith with the landowner of the affected parcel over which Ameren Transmission Company of Illinois 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, Ameren Transmission Company of Illinois 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 Ameren Transmission Company of Illinois by the owner(s). Ameren Transmission Company of Illinois shall

fully explain in that request why Ameren Transmission Company of Illinois 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 given to the owner, Staff and Public Counsel, the Commission will grant or deny the request.⁹⁹

3. That 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.¹⁰⁰
4. Prior to the commencement of construction on a parcel, Ameren Transmission Company of Illinois will secure an easement that includes 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, Ameren Transmission Company of Illinois 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, Ameren Transmission Company of Illinois will file a copy of the spreadsheet with the Commission, to which a map will be attached.

⁹⁹ Ex. 33, ATXI response to Staff data request 69; ATXI witness Douglas J. Brown, Tr. 5:232-233; Staff witness Daniel I. Beck, Tr. 10:725; Staff's positions on the listed issues filed January 20, 2016, pp. 7-8.

¹⁰⁰ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, p. 17; Staff's positions on the listed issues filed January 20, 2016, p. 8; Ex. 2, ATXI witness Maureen A. Borkowski, surrebuttal testimony, p. 5; Ex. 8, ATXI witness Douglas J. Brown, surrebuttal testimony, p. 14.

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.¹⁰¹

5. That Ameren Transmission Company of Illinois comply with the construction, clearing, maintenance, repair, and right-of-way practices set out in Schedule DBR-SR2 to the surrebuttal testimony of ATXI witness Douglas J. Brown.¹⁰²
6. That Ameren Transmission Company of Illinois file with this Commission the annual report(s) it files with the Federal Energy Regulatory Commission.¹⁰³

Variances

While not included in the list of issues, as Staff suggested in its position statements, the Commission should find that there is good cause to relieve ATXI from the filing and reporting requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175 and 4CSR 240-3.190(1), (2) and (3)(A)-(D) because these filing and reporting requirements are intended for ratemaking, but this Commission will have no jurisdiction over ATXI's rates because it will have no retail customers, so the filing and reporting requirements would impose a burden on ATXI with little commensurate benefit.¹⁰⁴

¹⁰¹ Ex. 34, ATXI response to Staff data request 70, ATXI witness Douglas J. Brown, Tr. 5:233-234; Staff witness Daniel I. Beck, Tr. 10:725; Staff's positions on the listed issues filed January 20, 2016, pp. 8-9.

¹⁰² Ex. 8, ATXI witness Douglas J. Brown surrebuttal testimony, pp. 15-16, Sch. DBR-SR2; Staff's positions on the listed issues filed January 20, 2016, p. 9.

¹⁰³ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 15 and 17; Staff's positions on the listed issues filed January 20, 2016, p. 9; Ex. 2, ATXI witness Maureen A. Borkowski, p. 6.

¹⁰⁴ Ex. 25, Staff witness Daniel I. Beck rebuttal testimony, pp. 15-16.

Conclusion

For all the foregoing reasons, Staff recommends the Commission make the following findings:

1. Ameren Transmission Company of Illinois is a public utility that requires a certificate of convenience and necessity from the Commission to operate in the state of Missouri;

2. With the six conditions enumerated above, the evidence in this case shows the Mark Twain project is “necessary and convenient for the public service”;

3. There is good cause to relieve Ameren Transmission Company of Illinois from the filing and reporting requirements of rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175 and 4CSR 240-3.190(1), (2) and (3)(A)-(D) because these filing and reporting requirements are intended for state ratemaking, but this Commission will have no jurisdiction over Ameren Transmission Company of Illinois’s rates; and

4. Ameren Transmission Company of Illinois does not have the consents of the county commissions of Marion, Shelby, Knox, Adair and Schuyler Counties, Missouri, or otherwise from the State of Missouri, to cross the public roads and highways in those counties;

and the following determination:

The Commission cannot lawfully issue Ameren Transmission Company of Illinois a certificate of convenience and necessity for the Mark Twain project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 4th day of March, 2016.

/s/ Nathan Williams