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.[1]	)	File No. EA-2015-0146

ATXI'S POST-HEARING REPLY BRIEF

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[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.

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COMES NOW ATXI[2] and, as provided for in the Commission's November 25, 2015 *Order Granting Motion to Amend Procedural Schedule*, hereby files its Post-Hearing Reply Brief in reply to the initial briefs of the Staff, the Neighbors and UFM, as follows:

A. Aside from the Neighbors,[3] all parties agree that the Mark Twain Transmission Line Project should be approved.

While ATXI and the Staff have a difference of legal opinion about the Commission's role and authority in this case vis-à-vis county authority under section 229.100, RSMo.,[4] there is little else about which ATXI and the Staff do not agree.[5] The Staff agrees that the Project benefits outweigh its costs (*i.e.*, that the public convenience or necessity supports approval of the Project), including agreement that the *Tartan* factors have been met.[6]

The Company and the Staff agree on a number of other important items, including that there are reliability concerns that should be addressed (and that the Project properly addresses them), that wind development prospects are good,[7] and that the Project, as a key part of the entire MVP portfolio, provides planning opportunities in meeting electric service needs in the future.[8] Finally, the Staff and ATXI have agreed on several conditions[9] that are specifically designed to

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[2] Terms abbreviated in the Company's initial brief have the same meanings when those abbreviations are used in this reply brief.

[3] Neighbors United Against Ameren's Power Line. One of the Neighbors did form a not-for-profit corporation in June 2015, just before the Neighbors sought intervention, but the Neighbors formed and have existed and operated as a landowner group opposed to the Project since September 2014, only about one month after ATXI held its first open house on the Project, as outlined in ATXI's *Motion to Compel Discovery* (at page 3) [EFIS Item No. 41].

[4] All statutory references are to the Revised Statutes of Missouri (2000), unless otherwise indicated.

[5] The only remaining area of disagreement relates to the Staff's contention that the specific economic analyses for the Project conducted by ATXI witness Dr. Todd Schatzki should not be relied upon. ATXI addresses below why the Staff's contentions in this regard are flawed and why, as do MISO's analyses of the MVP portfolio as a whole, Dr. Schatzki's analysis clearly indicates the significant benefits of the Project over its costs.

[6] With the conditions that have been agreed upon in place, putting aside the assent-related condition addressed below.

[7] Staff's Initial Brief at 11-12.

[8] *Id.* (discussing opportunities for RES compliance, for meeting needs driven by carbon-based regulation and for taking advantage of wind development).

[9] The Staff summarizes the conditions it recommends at pages 32 to 35 of its initial brief. There is agreement on those six conditions. Regarding the first condition listed on page 32, *see* ATXI's initial brief at pages 75-76 confirming that the condition is not intended to require, for example, all Missouri Highway and Transportation Commission permits at each highway crossing before any highway crossing could be constructed, but only *the*

fairly and effectively address Neighbor-introduced issues related to the impact on farming and routing, but which do so in a manner that is in accord with the *overall* public interest with which this Commission must be most concerned as a matter of law.[10] MISO, UFM[11] and the IBEW also agree that the merits of the Project support its approval. Also noteworthy is the fact that the Staff has also not endorsed any of the Neighbors' litany of concerns and complaints about the Project, and has indicated that it found ATXI's evidence persuasive in response to the Neighbors' claims about alleged negative impacts on the public health and welfare.[12]

The bottom line is that the Neighbors stand alone in opposing the Project, including on their claim that this Commission can't decide this case on the merits because of their contention that the Commission is completely prohibited from applying the Right-to-Farm Amendment (or, by their logic, any constitutional provision or principle that is raised by a litigant before the Commission) unless it is applied according to the Neighbors' reading of it. That reading, of course, is that removing an infinitesimally-small amount of farmland from production prevents the Project (and any infrastructure project) from ever being built in rural Missouri because doing so violates the Amendment.

As ATXI outlines below, much of the Neighbors' initial brief consists either of misstatements about what the evidence in this case actually shows or is based on ignoring all evidence with which the Neighbors do not agree. At times, the Neighbors' initial brief asks the Commission to draw inferences based on counsel's arguments that don't rest on any record

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permit for *the* crossing at issue. Also, a condition relating to assents (which in earlier testimony had been referred to as condition 2, since Mr. Beck had listed it second as had the Staff in its Position Statement) has not been agreed to and is addressed in detail later in this reply brief.

[10] *See* ATXI's Initial Brief at 27-28, discussing that the Neighbors' parochial interests are subordinate to the overall public interest with which this Commission must be primarily concerned.

[11] We will address the condition UFM has for the first time in briefing suggested in Section D of this reply brief.

[12] Staff's Initial Brief at 20.

evidence at all, but instead, depend entirely on unproven arguments about what the Neighbors claim, but can't prove, the extra-record evidence shows.[13]

Despite the Neighbors' extreme positions and their attempt to recast or ignore the evidence of record, ATXI wants to be clear that it does not doubt for a minute that the Neighbors primarily consist of "hard working farmers and ranchers who depend on the land for their livelihoods and to take care of their families."[14] Undoubtedly the same could be said of the many other farmers and ranchers across whose land needed transmission lines and other infrastructure has previously been built in the state. Nor does ATXI doubt that the Neighbors would rather not be impacted by the Project. Respectfully, neither their work ethic nor their desire to avoid all Project impacts have anything to do with the issue before the Commission in this case, which is whether the public convenience or necessity, within the meaning of that phrase in section 393.170 and as consistently interpreted by the courts,[15] is served by construction of the Project. The evidence overwhelmingly shows that it is.

Among other reasons, if this Project were not built, a backbone element of the entire MISO MVP portfolio would not exist.[16] This would mean that there would be no connection to the new 345-kV transmission line terminating at the Maywood switching station in Marion County nor to the upgraded 345-kV system within MISO to the north of Missouri. The point of these connections and the MVP portfolio as a whole is to allow power transfers among the various regions within MISO, moving power generated in the many energy zones (the "blue jelly beans") identified as part of the MVP analyses in a more efficient and effective manner, thus

[13] If such evidence proved what the Neighbors now claim it proved, one would have expected the Neighbors to include it in the record. Regardless, this Commission must make its decisions based upon substantial and competent evidence of record.
[14] Neighbors' Initial Brief at 3.
[15] *See* ATXI's Initial Brief at 2.
[16] *Id.* at 10-11.

providing substantial benefits in MISO, including in Missouri, as demonstrated by robust benefit/cost ratios determined by MISO and ATXI's expert, Dr. Schatzki.[17] And, while not the primary driver of the Project, without the Project there will be no new source of electric supply into Ameren Missouri's Adair Substation, or the existing 161 kV transmission system in the northeast Missouri area which supplies not just Ameren Missouri customers, but cooperative customers throughout northeast Missouri and which solves reliability concerns in northeast Missouri.[18]

It is also not the case that the proposed line can simply be placed in some even more remote area such that the Neighbors would not be impacted or would be impacted less. The proposed transmission line by its very nature must go from point A to point B to point C. By necessity, it must be routed from Maywood to near Kirksville and then north to interconnect with the MVP project being constructed by Mid-American Energy so that it can connect the Illinois Rivers Project to the east and with the MVPs to the north, while also providing the new supply to the Kirksville area and also traversing the energy zone identified by MISO that is located north of Kirksville. Necessarily, there will be some impact on farm and ranch land. The same can be said of other existing transmission lines, and could be said of a myriad of other routes that the line in theory could have taken.

In recognition of the fact that the line does have some impact, the Company has agreed with the Staff upon what is truly an unprecedented set of standards that govern right-of-way acquisition, construction, maintenance and repair, as reflected in the more than five pages of standards included as Schedule DBR-S2 to the surrebuttal testimony of Douglas J. Brown[19] and

[17] Exh. 21, p. 15, l. 6 – p. 16, l. 19; Tr. Vol. 5, p. 205, l. 16 – p. 206, l. 3. The benefit cost ratios were discussed in detail in ATXI's initial brief and are also addressed below.
[18] Exh. 4 (Kramer Surrebuttal).
[19] Exh. 8.

which will be binding on the Company as an imposed condition on the CCN sought in this case. Moreover, the Company has agreed to several other conditions that also mitigate the impact of the line and the route, such as those that address sticking to use of the 377 parcels identified in this proceeding and seeking Commission approval if it were to become necessary to obtain an easement on a different parcel, not necessitating removal of any residential structures and filing an appropriate description of the precise, surveyed route.

B. Reply to Specific Contentions of the Neighbors.

1. The Project and the CPP.

The Neighbors spend five-plus pages of their initial brief attempting to convince the Commission that the Clean Power Plan might not ultimately remain law and that this would imply that the Project will not be needed.[20] While it is true that the CPP rules were stayed, the Neighbors' invitation to the Commission to be blind to the prospect (through the CPP or otherwise) of a more carbon-constrained operating environment and to ignore that prospect in assessing the need for the MVPs in general and the Project in particular, should be ignored. Moreover, the entire argument is a red-herring given that the robust cost-benefit ratios reflected in MISO's analysis (2.6 to 3.9 times benefits over costs across MISO as a whole and 2.3 to 3.3 times benefits over costs for Missouri[21]) and in both of Dr. Schatzki's business as usual cases (24 to 35 times benefits over costs for Missouri with the Project as opposed to without it) *do not at all* depend on the existence of carbon regulation of any kind.[22] Consequently, even if the CPP or carbon regulation was completely irrelevant (it isn't), the Project is still justified.

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[20] Neighbors' Initial Brief at 5-9.
[21] Exh. 35, Sch. JTS-2 (J.T. Smith Surrebuttal)
[22] Tr., Vol. 9, p. 575, l. 10-25 (J.T. Smith testifying that the benefit/cost ratios determined by MISO were conservative in that they did not assume any carbon regulation, but that those ratios would improve if carbon regulation were assumed); Exh. 35, Sch. JTS-1 (Multi Value Project Portfolio Results and Analyses, p. 69, Figure 8.13 (the "benefits of the portfolio do not depend upon the implementation of any particular future energy policy to exceed the portfolio costs. * * * However, if other energy policies [are] enacted . . . . this benefit has the potential to

The CPP is, however, relevant. The Commission is well aware that the coal industry and coal-fired generation is now, and has been for years, under extreme pressure and that there is a continuing push for more and more renewable generation to displace MWhs that would otherwise be generated by coal.[23] Congress' recent extension of tax credits for renewables is but one example of the continuing effort to displace coal-fired generation with renewables.[24] That carbon constraints are on the horizon is not a new development, nor would any reasonable utility commissioner or utility ignore that prospect (and probability) in planning and building the transmission system. MISO accounted for the potential for carbon regulation in its MVP analysis, but as noted it conservatively did not *rely* on it when it determined that the MVP portfolio produced robust benefit to cost ratios; instead, the ratios simply would become even stronger with carbon regulation in place.[25]

The Staff certainly recognizes that regardless of the recent stay, the prospect of the CPP or other means of constraining carbon provides additional support for the Project: "Nevertheless, the addition of the Mark Twain project would limit the uncertainty [associated with carbon constraints] 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."[26]

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greatly increase."); Exh. 21, Sch. TS-03, Table 4 (Schatzki Direct) (Showing Dr. Schatzki's benefit-cost ratios of 24.6 to 34.6, without any carbon regulation; that same table shows that the ratios increase to between 59 and 68.6 if carbon regulation were imposed).

[23] Even the Neighbors point to the Commission's response to possible carbon constraints back in 2013 when the Commission wrote the letter included as a schedule to Mr. Powers' surrebuttal testimony, although Mr. Powers over-read (or mischaracterized) the message in the Commission's letter. His mischaracterization is evident in that he made it sound as though the Commission was saying that energy efficiency efforts alone could meet potential carbon regulation, but, as evidenced by Mr. Beck (who was involved in the drafting of that letter) that is not true as there is no such magic, silver bullet (like energy efficiency alone) to meet carbon constraints that may be imposed. Tr., Vol. 10, p. 734, l. 9 to p. 739, l. 1.

[24] Tr., Vol. 7, p. 394, l. 9 to l. 22.

[25] Tr., Vol. 9, p. 575, l. 4 to 25. As noted, the same thing is true for both of Dr. Schatzki's business as usual results.

[26] Staff's Initial Brief at 14.

In summary, while it is possible (and this was known before the recent stay) that carbon constraints via the CPP as it exists today may not materialize in that precise form, it is also possible that the CPP will be implemented as-is, or in another form that has similar impacts. Moreover, the stay says nothing about the merits of the CPP and by its express terms, the stay recognizes as much since it provides that if the D.C. Circuit affirms the CPP, and if *certiorari* is sought but not granted, the stay will simply end. To act as though the Project or the MVP portfolio will not facilitate compliance with the CPP or carbon regulation in general makes no sense.

2. Right-to-Farm

ATXI's initial brief explained that the Neighbors' position on the Right-to-Farm Amendment was extreme because the Neighbors were arguing that *any* impact on farming infringed landowners' "right-to-farm."[27] ATXI explained why this would make the Right-to-Farm Amendment unlike (and of elevated importance above) other constitutional rights, including those that are widely viewed as fundamental (*e.g.,* free speech),[28] and also explained that as a matter of basic grammar (the plain meaning of the verb "engage"), the Neighbors' arguments failed to hold water.[29] The Neighbors' initial brief serves to confirm ATXI's characterization of the Neighbors' position as extreme in that not only do the Neighbors claim

[27] ATXI's Initial Brief at 4-5.
[28] The notion advanced by the Neighbors at pp. 12-13 of their Initial Brief to the effect that the Right-to-Farm Amendment is different than rights such as free speech and is unfettered and unrestricted in the manner the Neighbors argue because there are no cases that interpret it as being balanced against anything whatsoever, is illogical and is simply a different way of telling this Commission that it must accept at face value what *the Neighbors* say the amendment means. If the Neighbors are dissatisfied with the Commission's decision in this case and appeal it, then it is absolutely true that the courts will ultimately decide what the amendment provides for, but that neither deprives this Commission of its ability to apply the amendment to the facts before it, nor prevents this Commission from deciding this CCN case.
[29] ATXI's Initial Brief at 4-5.

that a transmission line like this one can never be built,[30] but the Neighbors continue to claim that this Commission must accept at face value the Neighbors' arguments as to what the amendment means and dismiss this case entirely, *simply because the Neighbors made the argument in the first place*.[31]

ATXI won't unduly lengthen this reply brief by repeating all of its discussion that rebuts the Neighbors' right-to-farm arguments (see pages 3-9 of its October 28, 2015 *Response in Opposition to Neighbors United's Motion to Dismiss*).[32] The bottom line is that the Neighbors are simply wrong when they argue that this Commission cannot apply the law (constitutional provisions included) in the first instance in deciding matters before it, and are wrong when they claim that a right to "engage in" farming or ranching means that farming and ranching cannot in any manner or any degree be *impacted*, even though it can still be "engaged in." The Neighbors' position makes no sense, is contrary to the plain meaning of the amendment at issue and lacks any support whatsoever, notwithstanding the fact that the Neighbors stubbornly continue to tell the Commission that there are cases (*Duncan* and *Fayne*, cited in the Neighbors' Initial Brief at fn. 19) that support this view. To the contrary, as explained in ATXI's November 23, 2015 *Response in Opposition to Neighbors United's Motion for Reconsideration*, those cases simply stand for the proposition that an administrative agency must apply existing statutes and rules in making its decisions, and could not decline to follow them even if the agency believed they were unconstitutional.[33] That does not mean – and those cases (nor any other case) do not hold – that

[30] That is, without the full concurrence of every single person with any interest in any tract used at all for farming or ranching that is impacted by the improvement.
[31] Neighbors' Initial Brief at 12-14. These arguments are in substance nothing more than a rehash of the same arguments made by the Neighbors in its motion to dismiss, which were already rejected by the Commission. *Order Regarding Motion to Dismiss* [EFIS Item No. 75] at p. 5.
[32] EFIS Item No. 70.
[33] *Id.* See pages 2-3. Notably, the Neighbors made no attempt to rebut a single word of ATXI's discussion of those cases, but instead, simply repeat their incorrect claims about what they say.

the power of an administrative agency like the Commission to resolve matters before it is neutered simply because a litigant raises a constitutionally-based argument.

The Commission itself recognizes the fallacy of the Neighbors' argument: "However, constitutional issues must be raised at the first opportunity, and the Commission must frequently interpret statutory and constitutional provisions to adjudicate the issues within the scope of its jurisdiction."[34]

One final point regarding the Neighbors' Right-to-Farm Amendment arguments bears noting. As part of its argument, the Neighbors claim that granting a CCN for a transmission line over a farm or a ranch violates the Right-to-Farm Amendment because doing so would be a "regulatory taking" in violation of constitutional provisions governing the exercise of eminent domain.[35] As the Commission is likely aware, when a "regulatory taking" occurs, just compensation is due from the government, just as it would be when an interest of land is acquired by a formal exercise of eminent domain.[36] It is ironic indeed that the Neighbors continue to tell this Commission that it must accept what the Neighbors say the Right-to-Farm Amendment means (and on that basis entirely dismiss this case because the Commission cannot apply or interpret a constitutional provision), while at the same time the Neighbors in-effect ask this Commission to decide that its action would violate a different constitutional provision.[37] This "logic" gives rise to the following question: If this Commission is powerless to interpret and apply the Right-to-Farm Amendment, then what relevance does the Neighbors' regulatory taking argument have to this case, since the Commission would similarly be powerless to

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[34] *Order Regarding Motion to Dismiss* at 3 (EFIS Item No. 75).
[35] Neighbors' Initial Brief at 13.
[36] *See, e.g.*, *Clay Cty. by & through Cty. Comm'n v. Harley & Susie Bogue*, 988 S.W.2d 102 (Mo. App. W.D. 1999) (A "regulatory taking" occurs where an exercise of the state's police power via regulation results in a physical invasion of property or where it deprives the landowner of all economically beneficial use of the property. Like all takings, just compensation has to be paid).
[37] Mo. CONST. ART. I, Section 26, prohibiting the taking of property without the payment of just compensation.

determine if the Neighbors' regulatory taking argument is correct? The answer to that question is obvious, and it lays bare the flaws in the Neighbors' position.

3. The Neighbors' other contentions relating to need and Project benefits.

The Neighbors essentially divide their arguments in opposition to the need for the Project into two categories: 1) reliability related contentions, and 2) contentions about the need for wind generation, in particular, Ameren Missouri's wind-related needs for Renewable Energy Standard ("RES") compliance.

The following statement by the Neighbors exposes the parochial and short-sighted position on need that they are taking in this case, a position that seeks to advance only their narrow interests as landowners and disregards the much larger public interest with which this Commission must be concerned: "The authority of MISO to obligate construction of transmission encroaches on the regulatory authority of state public utility commissions, like the Missouri PSC."[38] That claim is not true, as evidenced by the fact that the Commission *is* exercising its "regulatory authority" *in this very case*.

Moreover, for more than a decade, this Commission has recognized that its utilities' participation in regional transmission organizations like MISO (and for the other investor-owned electric utilities operating primarily on the western side of the state, SPP) is beneficial, in large measure because of the market efficiency benefits RTOs bring, including economic dispatch of generation, which by its nature is heavily dependent on the transmission system.[39] Missouri utilities participate in RTOs because this Commission exercised its regulatory authority and in doing so, *agreed they should*. This Commission knew full well what that meant, including that it meant that the RTOs would approve regional transmission system improvements that would have

[38] Neighbors' Initial Brief at 24.
[39] *See, e.g, Report and Order*, File No. EO-2011-0128 (Apr. 19, 2012), resolving Ameren Missouri's last RTO proceeding.

to be built throughout the RTO footprint, including in all likelihood, in Missouri, and that the load-serving entities in those RTOs (including those in Missouri) would pay transmission charges arising from the cost of those projects. ATXI is confident that this Commission understands that transmission systems don't operate according to state boundaries and the needs of the system don't stop at state borders.

To act, as the Neighbors urge, as though a transmission line in Missouri only affects or benefits (or only should affect or benefit) Missourians, or that a line located elsewhere only affects or benefits those located elsewhere, is to ignore this reality. The delivery of electric service no longer occurs via only central station generators owned by the local utilities and that local utility's wires between that generation and its load. Since FERC Order 888 and its progeny, electric service is a regional if not nationwide effort. And under FERC Order 1000, regional and indeed inter-regional planning is required by law. The Neighbors' invitation to do so notwithstanding, Missouri can't stick its head in the sand and ignore regional transmission needs and the regional planning process just because a subset of its residents don't want to be impacted by needed transmission.

Missouri is benefitting from those portions of the MVP portfolio constructed in other states, and other states will benefit from Mark Twain and the Missouri portion of the Illinois Rivers Project constructed in Missouri – there is nothing wrong with that. And as pointed out in ATXI's initial brief, Missouri will pay its share of all of the MVPs in those other states, whether or not Mark Twain is built. If the Neighbors get their way, Missouri would pay for the other MVPs but would deprive itself of the benefits Mark Twain provides.

While addressed in ATXI's initial brief and below, it is also not true that Missouri is going to be a "loser"[40] by paying its $18 million share of the Project, given benefits that outweigh that cost by at least 24 times.[41] And there is nothing wrong with the fact that ATXI will earn a return on the Project. Every utility that builds infrastructure earns a return to compensate it for the capital it provides. That return was fully accounted for in the unrebutted and quite positive benefit/cost ratios in evidence in this case, the only indirect rebuttal of which is found in Mr. Powers' unconvincing attempt to pronounce the death of wind energy development in the United States. Do the Neighbors mean to suggest that utilities should provide capital to improve the utility systems they own and operate without compensation? Certainly public utility regulation as we know it would not work in such a construct.

i. The Neighbors misstate the evidence regarding the reliability-related concerns in the area and the reliability-related benefits of the Project.

The Neighbors contend that ATXI "inappropriately" dropped the evaluation of alternatives to address reliability concerns in northeast Missouri when the Project was approved by the MISO Board of Directors in 2011 and instead should have considered a number of other alternatives.[42] Their claim, suggesting that there was something inappropriate about ATXI's recognition that the Project was the best means to address the reliability concerns, is directly rebutted by the record. As Mr. Kramer testified, Ameren Services (which conducts transmission planning on behalf of ATXI and Ameren Missouri) considered various alternatives, but none of them both solved the reliability concerns that existed *and* delivered the other benefits created by

[40] Neighbors' Initial Brief at 24-25.
[41] Exh. 35, Sch. TS-03, Table 4.
[42] Neighbors' Initial Brief at 23.

the MVP portfolio in general and Mark Twain in particular--for a total price tag to Missouri of about $18 million.[43]

Why is that $18 million clearly worth it? It is worth it because it simply is not true that a static VAR compensator (of whatever size) will solve the reliability concerns at a lower cost.[44] It won't resolve the concern because such a device will not work, and even if it would (and assuming Mr. Powers' approach to what it would cost were sound), a device of sufficient size to address all of the load at issue would cost nearly twice as much as Missouri's share of the Project ($33 million or more).[45] Moreover, all that would be accomplished for that $33 million-plus expenditure is to address low-voltage issues without producing any other benefits at all. Not only is $33 million nearly twice Missouri's share of the Project cost, but instead of the cost being shared regionally across MISO as part of an MVP project, it would have to be paid for by Ameren Missouri and ultimately Ameren Missouri's customers alone.[46]

The $18 million investment is also clearly worth it because contrary to the Neighbors' claims, there *are* non-reliability-related benefits from the Project, as both MISO's and ATXI's analyses show. To find otherwise would require (at a minimum) that the Commission accept the Neighbors' theory that only solar generation will develop in the region and that it would develop without the need for any transmission (*e.g.,* on rooftops and parking lots). ATXI has thoroughly debunked such a notion in its initial brief.[47]

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[43] Exh. 4, p. 33, l. 8 – p. 34, l. 10; Tr., Vol. 5, p. 177, l. 8-15 (Mr. Kramer confirming that the Project is the best solution to provide the full range of possible benefits, economic and reliability-based, and that it was the lowest cost means to do so.).

[44] Tr., Vol. 6, p. 209, l. 25 – p. 210, l. 24 (Mr. Kramer describing his analysis showing that a huge static VAR compensator simply does not prevent the voltage collapse of concern).

[45] *Id.*

[46] Tr., Vol. 6, p. 209, l. 25 – p. 212, l. 4; Exh. 4, p. 37, l. 3-5 ("Since this alternative solution would not be part of the MVP Portfolio, the entire cost of Mr. Powers' proposed static VAR compensator would be paid by Ameren Missouri area customers.").

[47] Like Mr. Powers' cherry-picked solar projects, about which we know very little, from two locations in the southwestern United States, his comments during his redirect examination about a solar-based "community power

Aside from its incorrect claim that other alternatives were not considered, the Neighbors claim that even if they were considered they were only an "afterthought."[48] That too, is not true. As the record shows, Ameren Services was considering a new 345-kV supply source to the Adair Substation as one possible solution as part of its 2011 transmission system review, which was occurring *before* the MVPs were approved at the end of 2011.[49] Understanding that a new 345-kV supply source would solve the reliability issues and that such a source of supply could be included by MISO in the Mark Twain Project, Ameren Services worked with MISO to make sure it was a part of the MVP portfolio.[50] This was no "afterthought." To the contrary, it was an example of efficient planning because it reflected a "kill two birds with one stone" solution that solved a known reliability issue *and* that also took advantage of the substantial non-reliability-related benefits of the Project and the MVP portfolio as a whole.

In addition to the claims just discussed, the Neighbors continue to suggest that the "solution" to low-voltage concerns in northeast Missouri is to leave a huge amount of Ameren Missouri load exposed to catastrophic voltage collapse by reducing the load that would have to be shed (*i.e.,* customers that would have to lose power) to avoid the voltage collapse by installing a 5 MW solar facility in the area.[51] Aside from the fact that the Neighbors have not

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program" (a far different animal than the significant utility scale solar that would be needed to replace large quantities of wind generation) in Cedar Falls, Iowa sheds little light on the relative viability of wind generation versus solar generation in MISO, as the Neighbors would have the Commission believe given their reference to it at page 35 of their initial brief. The Neighbors continued attempt to tout the "peak" value of solar is also an attempted distraction, given that the benefits from the MVPs in general and from Mark Twain specifically are largely driven not by reducing capacity costs (i.e., increasing capacity margins by shaving the peak), but by lower energy costs – MWhs – not MW, as the MVP reports attached to Mr. Smith's surrebuttal testimony and the tables in the schedules to Mr. Schatzki's rebuttal testimony also demonstrate.

[48] Neighbors' Initial Brief at 28.

[49] Exh. 4, p. 33, l. 8 – p. 34, l. 10.

[50] *Id.*

[51] Neighbors' Initial Brief at 30. To avoid the need to prepare a separate Highly Confidential version of this brief, ATXI will refer the Commission to the Neighbors' initial brief or the record, as needed. Specifically, the amount of load that would still have to be shed would still be just 1 MW less than the highly confidential figure appearing in the middle of page 30 of the Neighbors' initial brief, and the exposure to voltage collapse for the event in question is

demonstrated that adding this 5 MW of solar generation would effectively reduce the load that needs to be shed, even if it would, the Neighbors' suggestion is much like their suggestion to try to "reclassify" the problems in order to act as though they no longer exist. As ATXI explained at page 24 of its initial brief, the problems will still exist (even if the magnitude of the problem may be slightly less).[52] Moreover, this is no reason to believe (and reason not to believe) that a reclassification could be accomplished.[53] The Neighbors hang their reclassification hat on a cross-examination *question* from their counsel to Mr. Kramer, where *counsel suggests* that because one regional reliability council in the west (WECC) may have some sort of protocol for reclassifications in certain situations this means that of course the reclassification it seeks would be approved by SERC. The Neighbors cite that question as if it were a fact.[54] The citation is misleading, because Mr. Kramer, who is responsible for SERC/NERC compliance across the vast transmission system operated by Ameren Services, did not confirm that there is a "consistency tool" between WECC and SERC (or any other regional reliability entity) setting the same planning requirements for them, and in fact had not heard of a tool being used to do so.[55]

The Neighbors also make two additional claims related to reliability issues that bear addressing. First, they claim that the most severe event that could lead to widespread voltage collapse has not occurred in the "45-year operational history" of the lines at issue, and they

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more than two times greater, as shown in the first row (under the bold headings) in the third column of Schedule DDK-SR2 to Mr. Kramer's surrebuttal testimony (Exh. 4).

[52] Tr., Vol. 6, p. 187, l. 24 – p. 188, l. 7. Certainly the customers whose load would still be lost likely won't get much comfort from the fact that some relatively small number of their fellow customers might avoid losing service; as Mr. Kramer put it, making the large problem slightly smaller won't turn a duck into a chicken. The duck may be a little less plump, but it will remain a duck.

[53] ATXI addresses this at pages 23-24 of its initial brief.

[54] Neighbors' Initial Brief at 31.

[55] Tr., Vol. 5, p. 173, l. 4-25.

imply that there are other reliability issues in northeast Missouri that are not being addressed by the Project.[56]

With respect to the first claim, Neighbors' counsel asked Mr. Kramer on cross-examination whether, as far as he knew, certain events that would cause the more severe voltage collapses had occurred at peak load.[57] Based on his answer, the Neighbors made the allegation marked as highly confidential in the first four lines of the last paragraph on page 30 of their initial brief, and thus imply that the low-voltage conditions are somehow not really much of a concern because the voltage collapse of concern had not happened in 45 years.

There is no proof that the conditions that would cause the voltage collapse have not happened in the past 45 years. Indeed, Mr. Kramer did not testify that those conditions had not happened at peak load in the past 45 years. To the contrary, he testified that all he could say is that when load peaked *since 2005* an event that would cause voltage collapse had not occurred.[58] We simply do not know, at peak or during off-peak, whether such an event occurred during the roughly first 35 years of operation. More importantly, during the period for which data is available (since 2005) it is undisputed that an event *did* occur during the off-peak and that *had it occurred at time of system peak,* it would have resulted in severe voltage collapse and loss of load. This is known because Mr. Kramer testified such an event occurred on December 10, 2010, and that it took 14 hours to get both lines back in service.[59] That a large number of customers were lucky enough that the 2010 event did not occur at peak load and did not cause them to lose service due to voltage collapse is no reason to ignore the fact that they would have lost service had the event occurred at peak load.

[56] Neighbors' Initial Brief at 30-31.
[57] Tr., Vol. 6, p. 185, l. 15-18.
[58] Tr., Vol. 6, p. 185, l. 15 to p. 186, l. 21.
[59] *Id.*

Finally, the Neighbors criticize ATXI for not providing "any information as to whether the presence of the Mark Twain line would have any impact on reducing the frequency" of outages that have occurred over the past five years in northeast Missouri.[60] This criticism also misses the mark. About five months after they intervened, the Neighbors sent Data Request 7-14, which did not even ask for the "information" the Neighbors now criticize ATXI for not providing.[61] Instead, the data request asked for the number of outages in the northeast Missouri region involving outages of 1,000 customers or more for more than 10 minutes, and ATXI answered that question fully. The data request did not ask ATXI to explain *why* those outages occurred or how they might relate to the low-voltage concerns that the Project does solve. As the Commission is well aware, outages can occur for a variety of reasons, and often that reason is a weather event that the utility obviously can't control. Moreover, the case at bar deals with *transmission system improvements*. It is a near certainty that impacts to the distribution system caused some portion (perhaps a very large portion) of the reported outages.

Regardless, is the Neighbors' point that a reliability improvement to the transmission system – that all agree will be effective to prevent voltage collapse for a large amount of load in northeast Missouri – should not be approved unless it goes farther to solve all possible causes (including those having nothing to do with transmission lines or that are beyond the utility's control) of outages? That seems to be the implication of the Neighbors' criticism of not providing "information" ATXI was never asked to provide in the first place. And, if the Neighbors are suggesting that Ameren Services is not doing an appropriate job of planning, constructing and operating the transmission system in this area, that suggestion is directly at odds

[60] Neighbors' Initial Brief at 31 (the highly confidential claim made in the middle of the page). While the Neighbors' cross-examination on this issue occurred during the *in camera* portion of the evidentiary hearing, the questioning and this information is not highly confidential.
[61] ATXI's response is of record as Exh. 53.

with SERC's audit conclusion over the past three compliance audits (covering the past nine years) finding that Ameren Services is in full compliance with NERC requirements.[62]

ii. The Neighbors ignore the evidence regarding the facilitation of wind (and other generation) and the related benefits the Project enables.

Pages 25-28 of the Neighbors' initial brief (and the Neighbors' preliminary statements in their Summary on pages 23-24 thereof) suggest that if it is not proven beyond doubt that Ameren Missouri can *only* comply with the RES if it builds (or buys from) wind generation in the Adair Wind Zone, and only if it is further proven that wind cannot be built in that zone absent the Project, will the Project deliver any wind-related benefits. ATXI has never argued that the *only* benefit from the Project would be if Ameren Missouri bought or built Adair Zone wind or that wind has to be built *in that zone* for the Project to have benefits. To the contrary, the evidence is that the Project has benefits because of the enablement of wind and other generation that the existing regional transmission system cannot reliably and efficiently accommodate and that would be located in both remote and more local areas (the many "energy zones"; the "blue jelly beans"[63]) all over MISO's footprint.[64]

It is undisputed, however, that Ameren Missouri does need more wind generation starting in 2019,[65] and that it has issued a request for proposal ("RFP") to start building or buying it.[66] That RFP gives priority to wind from generation located in Missouri.[67] The Adair Wind Zone is a likely and logical candidate for that wind because of its location in MISO and Ameren Missouri's electrical connections and load in or near that area.

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[62] Exh. 4, p. 25, l. 20 to p. 26, l. 6.
[63] Tr., Vol. 5, p. 205, l. 16 – p. 206, l. 3.
[64] Tr., Vol. 9, p. 592, l. 5 to p. 593, l. 3.
[65] Exh. 12, p. 20, l. 9-15 (Michels Surrebuttal).
[66] Tr., Vol. 5, p. 196, l. 5 – p. 196, l. 16.
[67] *Id.*

As outlined at pages 19-21 of ATXI's initial brief, wind development in the Adair Wind Zone is likely to occur if there is sufficient 345-kV transmission in the area because of its high quality wind resources. Without the Project wind has not developed in that area, despite those high quality wind resources. As MISO witness J.T. Smith explained, MISO has seen the same problem across its footprint in the absence of improvements to the 345-kV system.[68] A 400 MW wind farm is now actually proposed in that area, with the proposal being that it would connect to the Mark Twain line.[69] Even with that Project, the evidence is undisputed that more than 900 MW of additional wind generation could be connected to the line in that area and reliably and efficiently delivered to load even if that first 400 MW is built.[70] These are all facts: high quality wind, the ability to deliver (before running into transmission constraints) 1,347 MW of wind generation from that area with the Project in place, the lack of wind development in this favorable area without a 345-kV connection and a new, proposed project in that area designed to take advantage of the Project. By contrast, the Neighbors posit nothing more than theories and speculation from a witness with little or no expertise in transmission planning and barely any contact with wind generation at all.[71]

The Neighbors' theory is that at least for Ameren Missouri, the existing 161-kV system can handle the 325 MW of wind Ameren Missouri presently needs (if it can use in-state wind) for RES compliance.[72] But only Mr. Powers makes this claim. And the only witness in this case with both transmission and wind development credentials (Mr. Vosberg), who has first-hand

[68] Tr., Vol. 9, p. 597 l. 10-20; Exh. 35, p. 10, l. 18 – p. 11, l. 4 (J.T. Smith Surrebuttal).
[69] Tr., Vol. 5, p. 159, l. 9-12. The benefits arising from this 400 MW wind farm, like benefits arising from wind generation in MISO in general, do not depend on Ameren Missouri building the wind or buying it, as the Neighbors imply at pages 27-28 of their initial brief, as discussed at pages 21-22 of ATXI's Initial Brief.
[70] Tr., Vol. 9, p. 570, l. 1 to l. 18 (The line enables 1,347 MW of wind generation to be built in that zone and to be fully deliverable without transmission constraints).
[71] Tr., Vol. 7, p. 357, l. 11 – p. 358, l. 12; p. 355, l. 23 – p. 356, l. 10. In the 1990s Mr. Powers looked at turbine technology for one client, but cites no wind development expertise at all, much less in recent years.
[72] Neighbors' Initial Brief at 25.

knowledge of the MISO study that Mr. Powers claims proves his point, testified without challenge[73] that indeed Mr. Powers is simply incorrect. ATXI's initial brief addressed these issues, but that discussion bears repeating here because it directly rebuts the Neighbors' claims at pages 25-27 of their initial brief:

> [T]he Project 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."[74] Mr. Vosberg's testimony in this regard was corroborated by Mr. Smith's testimony where, as explained earlier, he confirmed that the study that Mr. Powers relied upon only showed that 60 MW could be connected and actually delivered to load and, even to connect and deliver that quantity, the developer was going to have to spend about $11 million.[75] To the point that merely "connecting" to the existing 161-kV system does not mean that the wind can economically be built, Mr. Vosberg testified that "while there may be opportunities to upgrade existing infrastructure to allow interconnection of some additional wind generation, these upgrades generally would not allow delivery of the generation to Ameren Missouri load without causing system congestion that would effectively limit the amount of energy that could be delivered."[76]

Moreover, contrary to the Neighbors' claim that Mr. Smith misled the Commission, it is the Neighbors who mislead the Commission when it comes to the 2007 MISO Interconnection System Impact Study Report, only five pages[77] of which were included by Mr. Powers as his Schedule PE-10. As Mr. Smith (who has obvious familiarity with the study at issue) explained, contrary to Mr. Powers' claim made based on those few pages, the study actually shows that just 60 MW – not the 300 MW claimed

[73] The Neighbors did not cross-examine Mr. Vosberg at all, and did not ask Mr. Smith a single question about the ability of the 161-kV system to serve new wind generation in the area, despite the fact that both of them testified on those topics.
[74] Exh. 17, p. 6, l. 9-12 (Vosberg Surrebuttal).
[75] Tr., p. 571, l. 12 – p. 573, l. 15.
[76] Exh. 17, p. 8, l. 12-16. This testimony also rebuts the overly simplistic claim starting three lines from the bottom of page 27 of the Neighbors' initial brief (continuing onto the next page) that the nameplate capacity of the existing 161-kV line proves that 400 MW of wind can be connected and delivered to load on the 161-kV lines.
[77] It is noteworthy that Mr. Powers only included five pages (cover page, and two summary pages) of the report in his testimony. The entire report, that actually establishes what the report did and did not conclude, covers 44 pages, plus a 117-page appendix.

by Mr. Powers – is fully deliverable, even after an expenditure of about $11 million to upgrade transmission assets in the area is made.[78]

Moreover, the Neighbors' argument now makes no sense, given that one of the theories Mr. Powers relied upon to claim that the existing 161-kV transmission system was good enough to support the 300 MW project that was the subject of the report at issue was that this $11 million was such a small part (about 1.5%) of the project investment that it would not deter development of the project in the first place.[79] If that is so – if all of the generation would have been fully deliverable for a mere 1.5% increase in project cost, then why didn't the project develop? And why has MISO seen wind projects enter its queue only to drop out when confronted with transmission constraints that exist in the absence of a 345-kV upgrade like the MVP projects, including Mark Twain?[80]

Lastly, it is simply not true that a 300 MW, or the 400 MW wind project now proposed,[81] can deliver its power on the existing 161-kV lines in northeast Missouri simply because when one sums the line ratings of each, the combined rating is more than 300 to 400 MW (*i.e.*, is 823 MW). The only 161-kV line in or near the Adair Wind Zone is Ameren Missouri's Adair to Appanoose line; the other two lines are not in or near Schuyler County.[82] The Appanoose to Adair line has a total rating of only 223 MW (far less than needed) even if the line had no load at all and even if the rest of the system in

[78] Tr., Vol. 9, p. 573, l. 9-15 ("Q. And all it really [the interconnection study] concluded is that you can perhaps spend $11 million and you could – you could deliver 60 megawatts. Whether you could deliver more was not concluded by the study; isn't that right? A. That is correct. Q. And that project wasn't built? A. That is correct.").
[79] Exh. 42, p. 11, l. 10-21 (Powers Rebuttal).
[80] Tr., Vol. 9, p. 597, l. 10-20; Exh. 35, p. 10, l. 18 – p. 11, l. 4.
[81] The record shows that now that there is a 345-kV solution in the area, there is a new 400 MW wind project in MISO's queue that desires to connect not to the existing 161-kV system, but to Mark Twain. Tr., Vol. 5, p. 159, l. 10-12.
[82] Exh. 4, Sch. DDK-SR1 (showing only one 161-kV line in the Adair Wind Zone) (Kramer Surrebuttal).

the region could handle the entire output without causing overloads or congestion.[83] Consequently, it is misleading for the Neighbors to point to the sum of the rating of the three 161-kV lines in northeast Missouri (823 MW) with the implication that the wind farm could simultaneously connect to all three at once even though two of the lines do not traverse, and are not even near, Schuyler County.

4. The Neighbors claim that ATXI is not "qualified".

The Neighbors do not dispute that ATXI has the necessary expertise to construct or operate the Mark Twain transmission line; indeed, no party disputes this. Instead, the Neighbors claim that ATXI is not qualified to provide the service because of its alleged inability to get along with the landowners who oppose the Project.[84] As evidence, the Neighbors point to the fact that those attending the open houses were required to sign-in before being admitted to the open houses and to snippets of statements made by former ATXI representative Peggy Ladd.[85] While the Neighbors' argument is not relevant to the issue of whether ATXI has the expertise to construct and operate the Mark Twain transmission line, the allegations made by the Neighbors deserve a response.

As ATXI President Maureen Borkowski explained at the hearing, the sign-in sheet was a system that it had successfully used in holding about 100 similar public meetings on the Illinois Rivers Project, and its purpose was to allow ATXI to determine whether property owners were actually attending the public hearings and to provide information for security.[86] Although Ms. Borkowski contends that sign-up sheets are likely to be used in the future, she acknowledged that some statements on the sign-in sheet – included at the request of corporation communications

[83] Tr., Vol. 5, p. 204, l. 13-18. Mr. Vosberg's unrebutted testimony says it cannot.
[84] Neighbors' Initial Brief at 32-33.
[85] *Id.*
[86] Tr., Vol. 5, p. 111, l. 10-24.

and the legal department – might be objectionable to persons attending those meetings and will be removed.[87] While the intent of the open houses was to give every property owner the opportunity to get information and ask questions, some members of the public were asked to leave when they repeatedly asked the same legal questions of ATXI staff not qualified to answer the question, thereby preventing others from meeting with ATXI officials.[88] Ms. Borkowski made it clear, however, that it was never ATXI's intent that members of the public – already upset about the transmission line project – feel disrespected or offended as that is "absolutely contrary" to the culture and values of ATXI and Ameren.[89] In an effort to avoid future misunderstandings, ATXI employees are to receive more training about how to deal with the public in a more sensitive way.[90]

The Neighbors' reliance on the statements made by Peggy Ladd, a former ATXI representative,[91] to prove that ATXI is not qualified to construct and operate the transmission line project is equally unpersuasive. Noting that the statements were taken out of context, Ms. Borkowski nonetheless acknowledged that she would not support the apparent tone of Ms. Ladd's statements.[92] Moreover, the statements are not indicative of ATXI's values or its past experiences – with exactly the same people involved – in successfully dealing with property owners on the much larger Illinois Rivers Project which also primarily traverses agricultural land.[93] And, while there may have been miscommunication and mistaken assumptions on the part of the public about its intent, ATXI's commitment to working with the public is evidenced by the fact that it voluntarily sent information to landowners, reached out to community leaders

[87] *Id.* p. 113, l. 11 – p. 114, l. 7; p. 142, l. 7-15.
[88] *Id.* p. 124, l. 9-17; p. 126, l. 24 – p. 127, l. 8; p. 130, l. 3-21.
[89] *Id.,* p. 125, l. 9-15; p. 126, l. 10-19; p. 140, l. 17-24.
[90] *Id.,* p. 126, l. 5-9.
[91] *Id.,* p. 132, l.18-23.
[92] *Id.,* p. 134, l. 10-18.
[93] *Id.,* p.139, l. 5 – p. 140, l. 3.

and held numerous open houses to obtain public input.[94] Despite how the Neighbors – who vehemently oppose the Project – want to portray ATXI's efforts, the intention of ATXI has always been to listen to the public's concern in a respectful manner.[95] And ATXI will continue its efforts to "treat folks the right way, and to work with all stakeholders as the Project proceeds."[96]

In addition, the Neighbors also offer as support for their claim that ATXI is not qualified to provide the necessary service its assertion – demonstrably false – that ATXI failed to notify one property owner of the proposed line, all the while acknowledging that ATXI had no statutory duty to provide such notice.[97] Though not required by any Commission rule,[98] ATXI took great effort in contacting members of the public and potentially affected landowners to apprise them of the Project and obtain their input. Before conducting the first round of public open houses in August 2014, 1,838 individual letters were mailed to landowners within 2,500 feet of any alternative route under consideration.[99] These same landowners were sent another letter notifying them of the second round of open houses held in October 2014 regarding the reduced route network.[100] At these open houses, information was presented on the proposed routes and questionnaires were available for those attending to provide their input on the proposed routes.[101] Over the course of the two rounds of meetings, 1,077 people attended the public open houses,

[94] *Id.,* p.140, l. 4-16.
[95] *Id.,* p. 141, l. 2-4.
[96] Exh. 2, p. 19, l. 1-5 (Borkowski Surrebuttal).
[97] Neighbors' Initial Brief at 33.
[98] The Commission agreed when it denied the Neighbors' Motion to Compel, stating: "[i]ndeed, the only legal authority cited is by ATXI and Staff, and that authority states that no such notice [actual notice of the case to every landowner] is required. Thus, the Commission will deny the motion for DR 2-16." *Order Regarding Motion to Compel* [EFIS Item No. 131], p. 3.
[99] Exh. 15, p. 14, l. 4-6 (Wood Direct).
[100] *Id.,* p. 14, l. 10-15.
[101] *Id.,* l. 17 – p. 15, l. 5.

451 questionnaires were completed, and 665 comments were received.[102] The voluntary efforts taken by ATXI to notify landowners of the proposed routes and to obtain their input were successful. In fact, the property owners that the Neighbors claim were "never contacted face to face or given any form of written notification" that their property was affected by the power line – Andrew Haer and his wife[103] – were certainly aware of the proposed Mark Twain Project. Over eight months before this hearing, on April 28, 2015, an Ashley Haer, residing at the same address as the one listed by Andrew Haer, contacted the Commission to register her opposition to the proposed Project because, among other reasons, it "would violate our property rights."[104] ATXI's efforts were not only successful in notifying the Haers about the Project and this proceeding, they demonstrate the obvious fact that ATXI went out of its way to apprise the public and affected landowners about the Project. The Neighbors' suggestion otherwise is based upon a manufactured argument that is, at the end of the day, simply not true.

5. The Neighbors' claims about impacts to farming or ranching.

Despite its extreme position that *any* negative impact on farming or ranching – no matter how minor – constitutes a violation of a Missouri citizen's claimed absolute right to farm, the Neighbors paint a dire picture of the destructive and widespread effects of the Mark Twain transmission line on farming and ranching practices. This is only possible because the Neighbors construct this argument by relying almost exclusively on the unsupported, pre-filed testimony of its own witnesses and ignoring any testimony or evidence to the contrary – regardless of its strength. The Commission must make its determination based upon the competent and substantial evidence, however, and the competent and substantial evidence on the

[102] *Id.*, p. 15, l. 6-10.
[103] Neighbors' Initial Brief at 33 (*citing* Exh. 48).
[104] Exh. 51.

whole record only supports the determination that farming and ranching practices are impacted only minimally and, for the most part, only temporarily.

So what will be the impact of the transmission line on ranching activities? According to Neighbors' witness Janet Akers, it raises a lot of "concerns" – concerns arising from the use of eminent domain and the desire to preserve family farms, concerns about its impact on rotational grazing practices, serious concerns about the impact of the transmission line on cattle herds, and concerns about whether additional (though not identified) ranching costs caused by the Project will be paid for by ATXI.[105] ATXI addressed the relevant concerns regarding the impact of the transmission line on ranching in its testimony, however, and the Neighbors' brief offers not one single word of rebuttal to explain why its concerns persist in light of ATXI's credible evidence.

For example, the Neighbors point to the surrebuttal testimony of Staff witness Shawn Lange when it raises its concern about rotational grazing practices related to the possibility that an electric fence situated near a transmission line may conduct an electric shock.[106] What the Neighbors conveniently omit, however, is the very next lines of Mr. Lange's testimony, which allay that "concern":

> Depending on the configuration of the fence and the route of the proposed Mark Twain Project, it is also possible to use low impedance chargers, filters, and/or additional grounding to mitigate this effect.
>
> Any modification equipment that may be needed to address the possible problems with the electric fences would be dealt with during the negotiation process with ATXI. The negotiation process occurs after a Certificate of Convenience and Necessity is granted by the Commission. During the negotiation process the affected landowners would be able to present evidence of the problems ATXI's transmission line poses to their electric fences and this evidence would be taken into consideration when compensation is awarded during the easement proceedings.[107]

[105] Neighbors' Initial Brief at 15.
[106] Neighbors' Initial Brief at 15, n. 26 (*citing* Exh. 30, p. 1, 24 – p. 2, l. 7).
[107] Exh. 30, p. 2, l. 5-14 (Lange Surrebuttal).

Mr. Lange's testimony regarding what ATXI would do to prevent these problems is not without any basis. ATXI Project Engineer David Endorf addressed the same concern that an electric fence in the right-of-way could pick up a charge from the 345-kV line: "ATXI would install an electric fence filter on the electric fence to filter out the induced 60 hertz charge to ground and allow the fence to operate properly. The cost of the fence filter and the installation would be paid for by ATXI."[108] The Neighbors offered no evidence at hearing and offer no explanation now why ATXI's plan to prevent the transfer of electricity from the transmission line to the electric fence does not completely eradicate whatever "concern" it might have related to the use of electric fencing for rotational grazing purposes.

Similarly, compelling evidence was presented to rebut the "concerns" of cattlemen regarding the impact of the transmission line on the health and well-being of cattle. Responding to Ms. Akers' vague assertion about the effects of the transmission line on livestock, ATXI witness Dr. William Bailey (a scientist and researcher on the effects of electromagnetic fields ["EMFs] for over 30 years) testified that based upon the considerable scientific attention that has been given to potential effects of EMF on livestock – particularly cattle, sheep, and swine – there have been no observed or reported "systematic differences in health, behavior, and productivity of livestock on farms intersected by high-voltage power lines compared to farms without such lines."[109] This has been confirmed by scientific studies of livestock.[110] The Commission has been presented with no evidence to contradict Dr. Bailey's testimony; in fact, the Neighbors did not even take the opportunity at hearing to challenge Dr. Bailey on any substantive portion of his

[108] Exh. 14, p. 7, l. 15-17 (Endorf Surrebuttal).
[109] Exh. 5, p. 31, l. 10-16 (Bailey Surrebuttal).
[110] *Id.*, l. 16 – p. 32, l. 4.

testimony.[111] Ms. Akers' vague concerns about animal health do not have a basis in fact and offer no support for a determination that the right to engage in farming or ranching is prevented in any way.

The Neighbors' "concern" that ATXI may not pay for "additional ranching costs" necessitated by the transmission line project[112] is equally without basis. Here, the Neighbors point to one exchange between the Neighbors' counsel and ATXI witness Doug Brown at hearing where Mr. Brown stated that while it would seem reasonable to pay for moving cattle from one grazing pasture to another, he was unable to state with certainty that ATXI would do so.[113] Referencing this answer alone is rather disingenuous as Mr. Brown then testified that ATXI would pay compensation for increased costs if they were demonstrated by the property owner.[114] And while the issue of eminent domain is irrelevant to the Commission's determination, the Neighbors' assertion that prohibiting the exercise of eminent domain – should it be necessary for this Project – somehow ensures that family farms remain in business in Missouri[115] is nothing other than an empty assertion, devoid of any supporting facts or analysis. In short, there is no competent or substantial evidence in the record that would support a determination that ATXI's transmission line project would prevent a Missouri citizen's right to engage in ranching activities; in fact, the substantial and competent evidence convincingly demonstrates that it would not.

This is also true with regard to a citizen's right to engage in farming. As explained in ATXI's initial brief, the Project will have only a minor and primarily temporary negative impact

[111] Instead, counsel for Neighbors chose only to briefly question Dr. Bailey on one of his educational degrees, the fact that he does not treat patients, and the fact that he is employed by Exponent, Inc. Tr., Vol. 7, p. 339, l. 23 – p. 342, l. 3.
[112] Neighbors' Initial Brief at15.
[113] Tr., Vol. 5, p. 238, l. 10-21.
[114] Tr., Vol. 5, p. 259, l. 21 – p. 260, l. 12.
[115] Neighbors' Initial Brief at 15. This Commission has been quite clear: complaints about the exercise of eminent domain are issues for the courts. *Order Regarding Motion to Dismiss* [EFIS Item No. 75], p. 4.

on farming activities in Missouri. Following its same strategy of ignoring all evidence rebutting the vague and unsupported statements of its own witnesses, the Neighbors argue that the Project will prevent aerial agricultural applications, limit irrigation practices, result in "very significant soil compaction," preclude farmers' reliance on GPS, and prohibit the use of large farming equipment and limit precision farming practices.[116] As explained in ATXI's initial brief, the presence of the transmission line will not preclude ground application of pesticides or herbicides and may only prevent aerial application in an area of about 60 feet on each side of the line[117] and will not impact current pivot irrigation nor necessarily preclude the installation of future pivot irrigation systems or alternative irrigation systems.[118] The Commission again has been provided no testimony or other evidence that refutes the testimony of ATXI witness Aaron DeJoia that ATXI's restoration practices are sufficient to address any soil compaction caused during construction and that these practices would return the land to its former productivity.[119] And, as Mike Silva explained, the presence of the transmission lines will not interfere with GPS use and, specifically, would not interfere with the Trimble system – despite the language the manufacturer included in the manual at the request of its lawyers.[120]

Why the presence of the transmission line at a diagonal will make precision farming "much more difficult to utilize" is unexplained – Mr. Kruse's testimony, relied upon by the Neighbors for this argument, provides no further explanation.[121] The Neighbors' reliance on the local public hearing testimony of landowners opposing the line sheds little additional light on this claim, only pointing to the purported fact that these landowners' property was intersected

[116] Neighbors' Initial Brief at 16-22.
[117] ATXI's Initial Brief, p. 42-43.
[118] ATXI's Initial Brief p. 46-47.
[119] ATXI's Initial Brief p. 43-44.
[120] ATXI's Initial Brief at 44-46.
[121] Neighbors' Initial Brief at 20, *citing Kruse Rebuttal Testimony* (Exh. 41), p. 6, l. 10-11 (stating that "the fact that the proposed structures would traverse fields at an angle would make precision farming extremely difficult.").

diagonally by the proposed transmission line.[122] The fact is that the proposed transmission line will only minimally affect the ability of farmers to navigate farming equipment under or around the transmission line and poles. The steel monopoles are self-supporting and do not require guy wires; in addition, the transmission poles will be spaced approximately 850 feet apart, thereby making them less intrusive to agricultural operations.[123] As Mr. DeJoia explained at hearing, the presence of a transmission pole in a field may require some additional maneuvering, but it does not in any way prevent farming operations or necessarily result in crop damage.[124] The competent and substantial evidence heard by this Commission exposed that the "concerns" of the Neighbors were alarmist and unfounded. The presence of the Mark Twain transmission line will not meaningfully impair the right of a Missouri citizen to conduct farming or ranching activities on their property.

6. The Neighbors' claims about the public interest.

Both Staff and UFM agree that the Project promotes the public interest.[125] It is the Neighbors alone who reject the notion that the Project promotes the public interest, relying on a scattershot approach that acts as if no evidence whatsoever was offered to rebut its own testimony. In addition to its argument that the Project infringes on a Missouri citizen's "absolute" right to farm,[126] the Neighbors raise the specter of the "potential for detrimental health consequences" related to EMF levels of the line, argue that land values will be adversely affected by the line, will have a negative impact on "environmentally sensitive areas," and will

[122] Neighbors' Initial Brief at 20, *citing Jackson Surrebuttal Testimony* (Exh. 44), Sch. 6. Even then, according to Exhibit 74, eight of the 26 landowners listed on Schedule 6 [Dale Goers, Tony Mersman, Debra Jeunen, Teri Page, Brian Thomas, Clifford Hollenbeck, Judy Peterson, and John Leunen] do not own property affected by the proposed route. Moreover, despite an additional landowner's testimony at the local public hearing that the proposed line would cut across his property diagonally, the proposed transmission line follows the parcel boundary of Bill Johns' property. *See* Exh. 74 at Parcel No. 1009031000000000100.
[123] Exh. 10, p. 8, l. 4-7 (DeJoia Surrebuttal).
[124] Tr., Vol. 7, p. 316, l. 24 – p. 317, l. 13.
[125] United for Missouri's Initial Brief at 5; Staff's Initial Brief at 18-19.
[126] Neighbors' Initial Brief at 36-37. ATXI's response to this argument appears above.

negatively impact the religious beliefs and practices of Amish and Mennonite communities.[127] Although ATXI's initial brief comprehensively rebuts each of these arguments,[128] a brief response is appropriate here with regard to one argument made by the Neighbors.

On pages 37-41 of the Neighbors' initial brief, the Neighbors list the names of landowners "on at least 121 parcels it [the line] will cross" who have homes or "other structures" within 2,000 of the proposed route and argue that the presence of the line poses a risk to health of these 121 landowners from exposure to low-level EMFs.[129] There are several flaws with this argument, however. Most importantly, the Neighbors simply rely on the speculative opinions of emergency room physician Dr. Smith about what "could" be to make this argument. Dr. Bailey actually presented engineering calculations on the EMF at the edge of the right-of-way for the proposed transmission line, and these calculations demonstrate that the exposure at the edge of the right-of-way was similar to that of low voltage distribution lines.[130] For the home nearest the transmission line, the range of EMF exposure was not above the background levels within the home if the transmission line was not even present.[131] Dr. Smith did not dispute this testimony.[132] Consequently, the fact other landowners have homes or sheds or barns even further from the proposed transmission line proves absolutely nothing – no matter how many names are included in the Neighbors' table. In fact, the Neighbors again engage in a familiar tactic of exaggeration (although this time it does not involve Amish persons who "confirmed" the night before the

[127] Neighbors' Initial Brief at 37-45.
[128] *See* ATXI's Initial Brief at 28-33 (demonstrating that there is no health risk associated with EMF exposure from the transmission line); p. 34-36 (demonstrating that the proposed route minimizes negative impacts to environmental habitats); p. 48-50 (demonstrating that the proposed route minimizes the negative impacts on Amish- and Mennonite-owned properties by crossing only one known property); and p. 50-55 (conclusively rebutting the argument that the proposed transmission line will significantly impact land values along the proposed route).
[129] Neighbors' Initial Brief at 41.
[130] Exh. 5, p. 21, l. 11-13; p. 29, l. 1-6.
[131] *Id*., p. 29, l. 7 – p. 30, l. 3.
[132] Tr., Vol. 9, p. 637, l. 6 – p. 638, l. 12.

hearing that their property was crossed by the transmission line when it, in fact, was not[133]) – the table contained in the Neighbors' brief identifies 121 landowners, but only 74 of these landowners own property impacted by the transmission line and not one of them has a home closer to the line than the distances assumed by Dr. Bailey.[134] In sum, the Neighbors have not raised one credible challenge that would support a determination that the Project is not in the public interest.

C. **Limited Reply to Non-Assent Related Arguments of the Staff.[135]**

ATXI noted earlier that aside from a difference of legal opinion on the "assents" issue, ATXI and the Staff are in full agreement about the merits of the Project and about appropriate conditions that in the Staff's view ensure that the Project is in the public interest. The only other area of disagreement relates to the Staff's overly narrow view of the evidence that should be relied upon to support the economic feasibility and benefits of the Project.[136]

1. Dr. Schatzki's analysis further demonstrates both economic feasibility and that the Project is in the public interest.

As explained in ATXI's initial brief, the Staff takes a narrower view of economic feasibility than is necessary or that is traditionally taken by the Commission itself. In assessing economic feasibility, the Commission routinely relies on projections of the economics of the proposal, as it did in *Tartan*.[137] There, the Commission relied on projected propane versus natural gas costs (in the face of opposition to the gas pipeline by propane dealers), and here, there are projections of lower production costs and emissions and reduced system congestion, among other

[133] *See* ATXI's Initial Brief at 48.
[134] Compare, for example, the names listed in the table on pages 37-41 of the Neighbors' Initial Brief with the parcel owners identified in Exh. 74.
[135] ATXI also addresses the Neighbors' criticism of MISO's and Dr. Schatzki's economic analyses in this section of this reply brief.
[136] Staff's Initial Brief at 17-18. The Staff also suggests that MISO's MVP and triennial review analyses results are not relevant to the economic feasibility of the Project. *Id.*
[137] *In Re Tartan Energy*, GA-94-127, 3 Mo.P.S.C.3d 173, 177 (1994).

benefits, that support the conclusion that the benefits of the MVP portfolio in general and of the Project in particular far outweigh its costs. Projections or not,[138] those analyses also show economic feasibility, as does the fact that ATXI's shareholders are willing to finance the Project.[139] Similarly, both MISO's analysis and that of Dr. Schatzki provide relevant information that supports the economic feasibility of the Project.

Having urged the Commission to ignore Dr. Schatzki's analysis in making its economic feasibility determination, the Staff goes a step further and indicates that the Commission should not rely on the "implications" of Dr. Schatzki's analysis results in making its overall public interest determination.[140] The Staff's position is a curious one, made all the more curious by the fact that it is advanced in the most conclusory of fashion (bare, conclusory statements in Ms. Kliethermes' rebuttal testimony (page 3)) and a similarly bare conclusion in its initial brief (page 19), and without asking Dr. Schatzki a single question on cross-examination. Regardless, the overwhelming evidence in this case demonstrates that Dr. Schatzki's analysis is sound, just as MISO's quite similar analyses (which the Staff endorses and relies upon) are sound. The Commission should consider and rely upon both sets of analyses in approving the Project.

The approach taken in both MISO's and Dr. Schatzki's analyses is essentially the same, except that MISO ran its modeling assuming all 17 MVPs were in-service, and Dr. Schatzki ran his assuming all of the MVPs except Mark Twain were in service. MISO's analyses show benefits to Missouri from the portfolio as a whole, and Dr. Schatzki's analysis shows greater benefits to Missouri in the "with Mark Twain" versus "without Mark Twain" case because, as

[138] Since the line has yet to be built, nothing other than projections are possible. The same can be said of every project and every CCN application.
[139] *Cf., Ozark Energy Partners, LLC* (GA-2006-0561) (*Report and Order*, Feb. 5, 2008) (where the Commission observed that an applicant's ability to secure financing for a project in a section 393.170 case is "overwhelming evidence that the proposal is economically feasible").
[140] Staff's Initial Brief at 19.

MISO and the Staff both agree,[141] Mark Twain is a key backbone to the operation of the portfolio as a whole.

ATXI can only surmise that the Staff has some vague concern that if it suggests Commission reliance on Dr. Schatzki's results, this would somehow prejudice it in a rate case for a Missouri investor-owned utility. If that is the concern, it is unfounded, as the revenue requirement in every rate case will have to be proven by the subject utility at that time. Dr. Schatzki explains it best:

> Ms. Kliethermes seems to be saying that in order to estimate a retail rate impact, a cost of service study is required that would take into consideration all those components that make up a retail rate. I agree that my analysis did not take such an approach. However, because of several important differences between an analysis needed to evaluate the economic consequences of long-lived infrastructure investments and that undertaken to set the specific rates to be charged to customers of a particular utility, such an approach would be neither necessary nor appropriate. First, my analysis considers *expected* costs many years into the future, which is appropriate given the Project's long operating life and the decision before the Commission of whether to grant a certificate for the Project. By contrast, a cost of service study is used to establish customer rates and, thus, typically reflects historical actual expenditures, and, in circumstances when future cost estimates are permitted, typically only considers costs one or two years into the future and only through well-documented "known and knowable" or "known and measurable" changes relative to past expenditures. Second, my analysis considers impacts and accounts for market effects across a wide market footprint, including MISO, the Southwest Power Pool ("SPP"), and system operators in and outside Missouri. By contrast, a cost of service study only considers costs for one utility. Third, my analysis focusses on the *difference* in costs between scenarios with and without the Project, whereas a cost of service study focuses on the *level* of costs. Consequently, there is no need to consider many elements of the utility's cost of service that must be evaluated to establish customer rates.
>
> With regard to Ms. Kliethermes' interest in the retail rate aspect, I can say that assuming all other retail rate components are held steady, including the impact of environmental regulations, and assuming that changes in production cost (including changes in purchase power and off-system sales) are reflected in retail rates, the Project would be expected to result in lower retail rates because the energy component of the rate will be reduced. [142]

[141] Tr., Vol. 5, p. 50, l. 23-25; Exh. 35, p. 13, l. 2-9.
[142] Exh. 22, p. 3, l. 18 – p. 4, l. 23 (Schatzki Surrebuttal).

Dr. Schatzki did not say that cost of service studies in future rate cases can be dispensed with based on his analysis. His testimony makes clear: he agrees that such studies must be done when rates are actually set. But that does not mean that his analysis, like MISO's, is not indicative of the fact that the MVPs in general (and the Project in particular) are fully expected to lower the cost of service for Missouri investor-owned utilities *below that which they would have been in the absence of the MVPs/the Project*. That is in fact the very essence of the benefit/cost ratios both MISO and Dr. Schatzki derived and given those results, rates clearly would be expected to be lower with the Project than without it.

Dr. Schatzki also explained why it would reflect poor policy (and would deprive the Commission of consideration of relevant information) if the Commission were to accept the Staff's invitation to disregard such analyses in a case such as this:

> In effect, Ms. Kliethermes advocates for a standard for determining what analyses should or should not be considered that could be impossible for any company coming before the Commission to meet. While individual companies may have data on their resources and system that is more precise than data included in the MISO/Ventyx data sets, they would not have such information for the other utilities operating within MISO, SPP and other nearby systems and thus would need to rely on publicly available data for all these companies, including regulated and non-regulated utilities in Missouri, and utilities outside Missouri. Thus, if all analysis must reflect company-specific data comparable to that used in a rate case, no individual company would be able to meet that standard and the Commission would effectively be deprived of relevant analyses that can aid in its case determinations. This outcome would be to the detriment of the citizens of Missouri, because new infrastructure proposals, such as the Project, or many other matters before the Commission, would not be evaluated in terms of the economic benefits and costs they provide for the citizens of Missouri. If such analyses were to be disregarded, the Commission would be precluded from considering economic consequences when evaluating whether proposals are in the public interest.[143]

[143] *Id.,* p. 6, l. 11 – p. 7, l. 5.

At bottom, just as the MISO analyses support the Commission's public interest determination in this case – as the Staff itself agrees – so too does Dr. Schatzki's analysis, and perhaps even more so given that it is a specific with and without-Mark Twain analysis.

2. The Neighbors ignore the inconvenient truth that both MISO's and Dr. Schatzki's analyses demonstrate benefits from the Project, across MISO and in Missouri.

The Neighbors create a straw-man by essentially claiming that without proof of what the exact future rate case revenue requirement (and the resulting rates) will be for load-serving entities in Missouri, there can never be substantial and competent evidence of Project benefits.[144] As outlined above in connection with the Staff's claim that the "implications" of Dr. Schatzki's analysis should be ignored, the Neighbors' position denies the reality that both MISO's and Dr. Schatzki's analyses show that the production costs for Missouri load serving entities are lower with the Project, which necessarily would have to mean that future revenue requirements will also be lower than they would have been without the Project. It is true: the precise impact cannot be determined – by their very nature, forward looking analyses are projections – but there can never be a CCN case based on actual impacts of a project because under section 393.170, the Commission must approve the project *before* it is constructed at all. By the Neighbors' logic, no applicant could ever prove its case.

The Neighbors then note that MISO did not conduct a specific Missouri-benefit analysis, and then criticize (and as explained below, misrepresent) the Missouri-specific analysis that is of record in this case performed by Dr. Schatzki. The Neighbors ignore that MISO's analysis shows benefits *to Missouri* ranging from 2.3 to 3.3 times benefits over costs, but regardless, Dr. Schatzki's Missouri-specific analysis shows even more Missouri benefits.

[144] Neighbors' Initial Brief at 34.

The Neighbors' claims about Dr. Schatzki's analysis are also false and misleading. The Neighbors claim that Dr. Schatzki's analysis shows that there is "essentially no difference" in economic outcomes with and without the Project, but this is demonstrably not true.[145] The Neighbors completely ignore the very substantial and positive impacts of the Project reflected in Dr. Schatzki's analysis. The analysis estimates changes in Missouri customer rates (reflecting avoided production costs) ranging from $97 to $292 million *annually*.[146] The lifetime benefits total $700 million to $2.1 billion in present value terms.[147] Those numbers reflect a huge difference with, and without, the Project. The Neighbors' initial brief also misstates the facts about the magnitude of the change in locational marginal prices as being just 0.5 percent, when, in fact, Dr. Schatzki's estimated impacts range from 0.6 to 1.15 percent in 2021 across scenarios analyzed, and .4 to 1.2 percent in 2026, also across all scenarios.[148] The 0.5 percent cited by the Neighbors is below the range in 2021 and near the bottom of it in 2026. Significantly more important, however, is that the estimated reductions in costs (which are what would flow into customer rates) were much larger, 3.2 to 3.5 percent in 2021 and 3.1 to 3.5 percent in 2026, across all scenarios analyzed.[149]

The Neighbors claim further that "Schatzki conducted no analysis of the accuracy of his forecast price projections." [150] That statement is also plainly false. Dr. Schatzki performed a scenario analysis to measure the sensitivity of his results to assumptions about future load growth and other energy policies that would affect resource investments and fuel prices.[151] Results across these scenarios showed positive benefits in terms of reduced LMPs and production costs,

[145] *Id.,* p. 35.
[146] Exh. 21, p. 18, l. 16-21 (Schatzki Direct).
[147] Assuming an 8.2 percent discount rate. Exh. 21, Table 2, Table 4.
[148] Exh. 21, Table 1.
[149] Exh. 21, Table 2.
[150] Neighbors' Initial Brief at 36.
[151] Exh. 21, p. 10, l. 16-20.

which confirm that the Project's benefits would arise under a wide range of future market outcomes and which therefore show that the "accuracy" of the forecasts was tested.

The Neighbors also assert that Dr. Schatzki's analysis relies on the assumption that future RES requirements will be met solely through wind resources.[152] This, too, is incorrect. Dr. Schatzki's analysis assumes that renewable energy requirements are met through a combination of both solar and wind resources, including sufficient solar power to meet the solar carve-outs of state renewable energy requirements.[153] These are the same underlying assumptions about future resource development as those made by MISO in its MVP portfolio analyses. The Neighbors further claim that "some or all" of the power delivered by the MVPs would be natural gas-fired generation, rather than wind power. Regardless of the accuracy of this claim,[154] the Neighbors fail to identify why this outcome would be detrimental to Missouri electric customers. To the extent that the Project is able to deliver low-cost energy supplies (whether from wind, solar or natural gas) to Missouri customers, such "imports" would be beneficial to customers by lowering customer bills. Finally, the Neighbors' claim that solar power can be delivered at lower cost than wind power, making the Project obsolete, is demonstrably unsupported and directly contradicted by the record, as detailed at pages 12 - 21 of ATXI's initial brief.

D. Reply to UFM

While UFM agrees the Project should be approved, in direct violation of the Commission's rules, UFM attempts via its post-hearing briefing to rebut ATXI's evidence in support of its proposed route by asking this Commission to, in effect, adopt legislation in

[152] Neighbors' Initial Brief at 35.
[153] Exh. 21, Sch. TS-02 (p. 3) (Showing that both wind and solar resources were used in determining benefits in Dr. Schatzki's analysis); Exh. 35, Sch. JTS-1 (p. 35) (same – both wind and solar resources were assumed to be added in MISO's analysis. As noted, Dr. Schatzki and MISO's analyses took similar approaches).
[154] The record reflects that the claim is not accurate. For example, Mr. Kramer testified that the probability of all of the flows on the Mark Twain line being from natural gas was practically zero. Tr., Vol. 5, p. 181, l. 3 to l. 11.

Missouri by imposing, via a condition, the terms of an Iowa statute that is not only not the law in Missouri, but which has never been applied by analogy in a Commission CCN case. The statute in question requires Iowa transmission lines to "conform to division lines of lands, according to government survey, wherever the same is practicable and reasonable, at the request of the owner or owners of the land or lands affected."[155] UFM's out-of-time attempt to coax the Commission into imposing such a condition is improper.

4 CSR 240-2.130(7), coupled with the Commission's adoption of a procedural schedule in this case, required UFM to include via rebuttal testimony "all testimony which is responsive to the testimony and exhibits contained in any other party's direct case." In addition, where the "moving party files direct testimony [as ATXI did], rebuttal testimony shall include *all* testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case" (emphasis added).

ATXI's direct testimony (specifically, from its routing expert, Chris Wood) specifically explained how and why the final Project route was chosen. Not only did UFM not provide any testimony as to why UFM rejects that route or disagrees with it, or to propose an alternative (including the alternative that has now been brought up on post-hearing briefing), UFM did nothing else in this case that would have fairly apprised ATXI of the alternative for which it now advocates. UFM conducted no discovery in this case, did not raise this proposed condition as a potential condition in its pre-hearing position statement,[156] did not apprise the parties or the Commission of this position by giving an opening statement,[157] and did not cross-examine Mr.

[155] UFM's Initial Brief at 6.
[156] *Position Statement of United for Missouri, Inc.* [EFIS Item No. 143], p. 4 ("UFM does not have a specific condition to recommend to the Commission at this time but suggests the Commission impose such conditions that result in the least harm to Missouri landowners.").
[157] Tr., Vol. 5, p. 66, l. 19-20.

Wood or anyone else on the issue.[158] Moreover, no other party proposed such a condition (again, which is effectively an alternative route) for consideration by the Commission.[159] As a result, the mere proposal of such a condition violates the Commission's rules, not to mention that there is absolutely no evidence in the record to support it.

Not only does the mere proposal of such a condition violate the Commission's rules, it violates the CCN statute itself. Section 393.170 provides that the Commission may award a CCN and impose conditions that are reasonable and necessary "after due hearing." There can be no "due hearing" if a party is not advised of the proposed condition and no evidence is adduced to support such a condition; instead, there must be evidence presented at the hearing to provide a basis for the imposition of proposed conditions.[160] Here, there is no evidence whatsoever in the record upon which the Commission could make a determination as to the appropriateness of such a condition. Specifically, there is no evidence to demonstrate where these undefined "division lines"[161] are located in relation to the proposed route or whether following these "division lines" would result in additional impacts to environmental habitats, cultural or historical sites, state or federal conservation areas, municipalities, airports, existing farms, or adjacent landowners. Moreover, UFM has elicited no evidence as to the potential costs – which could be substantial –

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[158] Tr., Vol. 7, p. 444 – p. 482.

[159] *See Neighbors' Position Statement* [EFIS Item No. 150], p. 10; *Staff's Position Statement* [EFIS Item No. 148], p. 6-9; *OPC's Position Statement* [EFIS Item No. 147], p. 3; *MIEC's Position Statement* [EFIS Item No. 142], p. 1; *MISO's Position Statement* [EFIS Item No. 137], p. 3; and *IBEW 1439's Position Statement* [EFIS Item No. 149], p. 2.

[160] *In re: Application of Environmental Utilities, LLC*, 2002 Mo. PSC LEXIS 890 at *34-35, 11 Mo. P.S.C. 3d 360 (June 27, 2002 Report and Order) (where OPC proposed seven additional conditions in its initial post-hearing brief, Commission determined that the evidence presented at hearing did not provide a basis for the imposition of any of the new conditions); *see also In re: The Empire District Company's Tariff Revision*, 1997 Mo. PSC LEXIS 29 at *4, 6 Mo. P.S.C.3d 17 (where utility proposed a certain figure for its revenue deficiency in its initial post-hearing brief, Commission struck that portion of the brief because "[i]n order to have a full and fair hearing," the derivation of the number "must be contained in testimony which is subject to cross-examination.").

[161] UFM does not define in its brief what it means by division lines. The Iowa Supreme Court has interpreted similar language in the Iowa statute relied upon by UFM to mean "section lines, quarter-section lines, and quarter-quarter-section lines that divide land into 640-acre, 160-acre, and 40-acre tracts, respectively." *Hanson v. Iowa State Commerce Comm'n*, 227 N.W.2d 157, 159 (Iowa 1975).

of imposing such a condition. Adopting such a condition without any evidence to support it would not be based upon competent or substantial evidence, and doing so would deprive ATXI of a "due hearing" on the issue.

Furthermore, the proposed condition assumes that a proposed route that does not follow division lines necessarily impairs a property owner's use of their property – something which the competent and substantial evidence in this case has effectively rebutted, as demonstrated in ATXI's initial post-hearing brief and elsewhere in this reply brief. Even more troubling is the fact that UFM's proposed condition amounts to a revision of the entire routing process at the request of any landowner on the route, thereby resulting in a delay of the Project and the benefits it provides.[162] The imposition of such a condition on ATXI's CCN at this late stage is unjustified.

The fact that UFM's proposed condition appears to be based upon a policy decision reached by Iowa's legislature and enacted into law[163] highlights this fact. Where a policy decision to require a utility to follow "division lines" and other infrastructure features is debated and then enacted into law, the utility is given notice of that requirement *before* it engages in the routing of a transmission line. In that instance, the utility can route the line accordingly and resolve disputes about deviations from the boundary lines during the routing process. Here, however, the condition is unilaterally imposed *after* a lengthy and involved transmission line routing process that took into account multiple considerations related to routing – including following parcel boundary lines where practicable[164] – and *after* a hearing where the merits of

[162] Leaving aside the reliability benefits of the Project, the economic benefits are substantial. ATXI witness Dr. Todd Schatzki testified that the economic benefits of the Project to Missouri are at least 24 times its cost to Missouri (and could be as much as 68 times its cost). (Exh. 21, Sch. TS-03).
[163] UFM Initial Brief at 7 ("The state of Iowa has established a useful provision on this public policy issue within their statutes.").
[164] ATXI's proposed final route follows the parcel boundaries of 134 parcels and partial parcel boundaries for an additional six parcels. Exh. 74. Even where the proposed route follows parcel boundary lines, landowners oppose the Project. *Compare, e.g.*, Table in Neighbors' Initial Brief at pp. 40-41 with maps in Exhibit 74 (Parcel Nos. 021-02-05-15-000-00-01.00; 021-03-06-14-000-00-04.00; 0501001000000000200).

the proposal in light of ATXI's routing process could have been discussed. Imposing such a condition would, in effect, "move the goal posts" in a CCN case in Missouri because it would effectively (and retroactively) impose a new burden on applicants for a CCN to put on evidence and prove the elements of a statute not adopted in Missouri.[165]

The evidence in this case is that ATXI engaged in a robust route selection process that had as its goal at the outset to avoid or minimize the adverse impacts on natural and social resources while providing a cost-effective and technically-feasible route alignment.[166] In the early stages of the route selection process, the ATXI routing team identified several routing principles to develop route alternatives, including maintaining as much distance as practical from densely-populated residential areas, homes and public facilities; minimizing impacts to residences and other social or cultural resources; minimizing impacts to wetlands, woodlands, and wildlife; minimizing conflict with current and planned uses of land; minimizing impacts to irrigation systems; and minimizing length and angles, among other criteria.[167] Once preliminary route alternatives were developed, ATXI held open houses for the purpose of providing information about the route alternatives and of gaining public input and information about the proposed routes that it might not otherwise know.[168] The primary concerns of those attending the public open houses had to do with the proximity of routes to homes, the potential impact to agricultural lands and the impact to forested lands.[169] These considerations were taken into account when ATXI narrowed down the preliminary route network and when it selected the final proposed route; ATXI's final route had a lower residential proximity, crossed less parcels, minimized length across prime farmland and that minimized length across woodlands than

[165] The statute at issue, Ia. Code § 478.18, was first adopted in Iowa in 2002.
[166] Exh. 15, p. 3, l. 13-15 (Wood Direct).
[167] *Id.*, p. 8, l. 3-18.
[168] *Id.,* p. 13, l. 20 – p. 15, l. 2.
[169] *Id.,* p. 15, l. 13-17.

alternative routes.[170] In addition, the final route had the least impact on Amish and Mennonite communities and had fewer diagonal crossings across parcels.[171] UFM offered absolutely no evidence (including a total failure to even raise the issue or timely propose an alternative) to impeach the route selection process at any proper stage of this case; as such, it has no evidence to point to that would support the imposition of its proposed condition after-the-fact, and has violated the Commission's rules, as well as the due hearing requirement of CCN statute and basic notions of fair play, by injecting the proposed condition into this case now.

UFM cites the need to protect the property rights of Missouri citizens, and ATXI understands that many landowners would rather not have a transmission line on their property if given the choice. What UFM is asking this Commission to do is to effectively make eminent domain-related decisions regarding the propriety of a potential eminent domain action involving a landowner who may not agree with the route and who refuses to voluntarily grant an easement. Those are eminent domain-related issues that are solely within the province of Article III courts, as this Commission fully recognized in its *Order Regarding Motion to Dismiss*. Moreover, contrary to the legal principles that govern this Commission's actions in a case such as this,[172] UFM is attempting to elevate the individual interests of the opposing landowners in this case above the overall public interest that the Commission's position as a statewide public utility commission charges it with protecting. UFM advocates for this position under the guise that the Project has *only* regional benefits and that this somehow denigrates it to a second-class status, but this is not true. As explained in this brief and ATXI's initial brief, the MVP portfolio as a whole, and even more so the Mark Twain Project, produces substantial benefits *for Missouri*. As discussed above, the power Missouri utilities use to serve their Missouri customers no longer

[170] *Id*., p. 8, l. 7 – p. 19, l. 7; p. 22, l. 1 – p. 24, l. 2; p. 26, l. 1 – p. 27, l. 20.
[171] Tr., Vol. 7, p. 465, l. 14-20; p. 482, l. 9-13.
[172] ATXI's Initial Brief at 27-28.

simply comes from Missouri power plants located near Missouri load, and electric service does not start and stop at Missouri's borders.

The time for a debate about a condition such as this was at a minimum when rebuttal testimony was due in this case; the debate should in actuality take place at the Capitol, if at all. But the debate has no place in this case at this time and it was improper for UFM to inject it in its post-hearing brief.

E. The Commission's Authority Under Section 393.170 and County Authority Under 229.100.

1. The Commission decisions and court cases cited by the Staff, which are predominantly decisions involving area certificates, do not support the Staff's position.

The Staff devotes a significant portion of its initial brief to what amounts to a case survey (a few court cases; many Commission decisions) of cases that often, but not always, involve whether and to what extent there is a relationship between franchises and CCNs. The Neighbors pile on, largely in reliance on prior research the Staff shared with counsel for the parties before briefing in this case commenced, much of which is repeated in the Staff's initial brief and some of which was cut and pasted into the Neighbors' initial brief. As indicated in ATXI's initial brief,[173] despite the breadth of the Staff's research, it remains true that no party has ever before alleged, and that the Commission has never concluded, that a county assent under section 229.100 is a prerequisite to Commission action on a CCN application on facts such as those present in this case; that is, where the applicant is a company that owns only interstate transmission assets in Missouri and has no Missouri service territory whatsoever. Indeed, the Commission unconditionally granted Transource and IES CCNs for interstate transmission lines,

[173] *See generally* pages 59 to 64.

with this case being the third case in the Commission's 103-year history involving an interstate transmission line to be built by a company without any Missouri customers.

Commission acceptance of the Staff's view here would be to reach a conclusion on such facts that it has never before reached. In addition, accepting the Staff's view would mean that the Commission would have determined that the Project is in the public interest and ought to be built, but will at the same time mean that the Commission will have subordinated its determination to what five elected county commissions (who are clearly under pressure from a vocal group of local residents) may later do, even though the issue before the county commissions will have nothing to do with making a decision as to whether a particular utility provider ought to be chosen to serve the county residents.[174] This not only would be contrary to common sense, but it would reflect poor policy.[175]

So what of the Staff's view, and the research the Staff cites to support its view? An examination of the 19 Commission decisions cited by the Staff[176] reveals that 13 of them clearly involved *area* certificates arising under sub-section 2 of section 393.170.[177] This means that all of those Commission cases involved municipalities that had made a decision as to who they wanted their municipality's utility provider to be; *i.e.,* there was a *quid pro quo* involved – take on the obligation to serve the residents and in exchange use the municipality's roads or streets to do so. These Commission cases can completely be reconciled with the fact that a section

[174] To be clear, ATXI believes that the law clearly will not allow one or more counties to bow to political pressure and to deny assents simply because of a perception that the counties' citizenry may "oppose" the Project, but clearly that is the Neighbors' hope. Neither section 229.100 nor would the legal principles applied by the Missouri Supreme Court in the *Crestwood* cases addressed in ATXI's initial brief allow the county commissions to "just say no."

[175] Common sense and policy are relevant considerations in determining what the law requires because good law is, at its core, grounded in common sense. *State ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n*, 515 S.W.2d 845, 851 (Mo. App. K.C. 1974)

[176] Aside from *Transource;* Staff ignored the *IES* decision. ATXI discussed *Transource* and *IES* in its initial brief at pp. 69-70.

[177] *Lanagan, Missouri-Kansas Pipe Line, Missouri Public Service, Union Electric (1951), S.W. Water, Central Missouri Gas, Frimmel, National Development, Gray's Summit, Saline County Sewage, Bonneville, Grand River and Midstate.* The Neighbors cite one additional area certificate decision, *Southern Missouri Gas Co.*

229.100 assent is not a precondition to granting a CCN in this case, either because the franchise/municipal consent requirement of section 393.170 simply does not apply in a sub-section 1 case, or because a franchise, *within the meaning of section 393.170*, is one where a service provider is being selected; where that *quid pro quo* exists – all as outlined in detail in ATXI's initial brief.[178] Consequently, the Staff's citation to those 13 cases does not support the Staff's conclusion.[179]

That leaves six other Commission decisions cited by the Staff, five of which were CCN cases[180] and one of which was a complaint case brought by a regulated electric utility that claimed a company proposing to build an intrastate transmission line was improperly doing so without first seeking a CCN.[181] All five of the CCN decisions involved existing, electrical corporations and public utilities in the state *that had certificated service territories and served Missouri customers*. This makes them unlike ATXI, just as the companies in those cases were unlike the companies in *Transource* and *IES*. In each of those cases, the company at issue had a county franchise, in some cases obtained years earlier. That these companies had franchises (and served Missouri customers and thus were not transmission-only companies like ATXI, Transource and IES) does not mean that they were *required as a matter of law* to have franchises for the particular transmission lines involved in those cases as a prerequisite to obtaining CCNs for those lines.[182] Rather, it just so happened that they did.[183]

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[178] See discussion starting at p. 64.
[179] These Commission decisions also do not establish precedent, since the Commission is not bound by *stare decisis*.
[180] *Arkansas-Missouri Power, Kansas City Power & Light, St. Joseph Light & Power/Kansas City Power & Light, Union Electric (1951 – to serve Rolla municipal utility) and Union Electric (1968 – to serve Citizens Electric).*
[181] *Empire v. Progressive*.
[182] The company in the complaint proceeding before the Commission had also obtained a franchise, but the Commission in that case essentially found that that company was going to be the service provider to the residents of Nixa, again making that company more like the utilities in all 18 of the Commission decisions cited and less like ATXI, Transource or IES.
[183] The Neighbors make much ado about the fact that ATXI obtained an assent from Marion County for its Illinois Rivers Project, claiming that doing so, and statements in ATXI's direct case that it would obtain "necessary"

The three court cases on this issue cited by the Staff also fail to establish the principle the Staff claims to exist: that in all CCN cases of all varieties involving all kinds of entities, a county franchise (assuming the line is in part in the unincorporated part of the county) is always required before a CCN can be "granted." In the *KCP&L* case,[184] the court simply concluded that when a utility seeks to *serve new customers in a new area* not previously covered by the *area certificate* it already had, it must obtain a new or additional CCN before it can do so. More specifically, the court held that just because the utility has a county franchise for the entire county does not mean it can dispense with also obtaining a new or additional area certificate from the Commission, if its existing area certificate only covers a part of the county at issue.[185] The question of whether a CCN request, having nothing to do with serving an area applied for by a transmission-only company like ATXI must not be formally granted until a county franchise was obtained, was not before the court in any way.

Shartel[186] was a case involving the attempt by the City of Sikeston to oust an electric utility from its borders where that electric utility had a city franchise and an area certificate to serve the city, but where the franchise had expired. The holding of the case was that ouster did not lie on the facts before the court because the city was estopped from ousting the utility because the city stood by and watched the utility build more facilities and issue capital to do so while knowing that the franchise was expired. While it is true that there is discussion about the interplay of sections 71.520 and 393.010 (provisions that apply to franchises in cities, towns and villages and the exercise of franchise rights in connection with the *supply* of electricity, gas, *etc.*

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assents, are "admissions" that ATXI must have the assents before the Commission can grant the CCN. Neighbors' Initial Brief at 10. Assents are required – are necessary – according to the assent statute and the timing of having them vis-à-vis section 393.170 is a question of law. That ATXI may have obtained an assent before, or that it indicated it will obtain them, if necessary, is not an admission. It is simply a statement of fact.

[184] 31 S.W.2d 67 (Mo. 1930).

[185] This is essentially the holding of the *Burton* case cited by the Neighbors, which ATXI addresses below.

[186] 53 S.W.2d 395 (Mo. 1932).

in a city, town or village), the case does not hold that a transmission-only company with no Missouri customers and that was not seeking a CCN to provide service (*i.e.*, is not seeking an area certificate to supply the city's residents), has to obtain a section 229.100 assent before its requested CCN can be granted.

Sikeston[187] is a subsequent piece of litigation between the utility and city involved in *Shartel.* The issue in *Sikeston* was whether the Commission was required to terminate the utility's area certificate covering the city since the city franchise had expired. The Commission had refused to do so. On appeal, the Supreme Court affirmed the Commission's decision, and in the course of doing so, discussed why a franchise from the municipal authority was a prerequisite to a CCN allowing the utility to *supply electricity to the municipality's residents* (*i.e.,* a prerequisite to an area certificate). As the limited quotes included in the Staff's initial brief indicate, the Supreme Court confirmed that this was the law *on those facts*, but in doing so, the court engaged in an extensive discussion of *why* this was the case and of the very purpose of section 393.170 in this context:

> The purpose of the statute requiring a finding of public convenience and necessity *before* authorizing a utility to enter a given field is obviously intended to prevent unnecessary duplication of service and undesirable competition.[188]

Those considerations – that purpose – is central when we are talking about a decision by municipal authorities to choose a particular supplier as opposed to another supplier, but are simply not implicated for an interstate transmission line owned by a transmission-only company like ATXI.

The Neighbors cite one other court case, *Burton*,[189] and claim that it is authority for the proposition that the Commission cannot grant a CCN until it knows the scope of the franchise

[187] 82 S.W.2d 105 (Mo. 1935).
[188] *Id.* at 109 (emphasis in original).

authority a county will grant. *Burton* says no such thing. Like the other cases, *Burton* involved an area certificate. The issue in *Burton* was whether the Commission could authorize a utility to serve an area that was larger than the area for which the utility possessed a county franchise, as was at issue in *KCP&L*. Put another way, the county had selected the utility at issue as the water supplier in a defined part of the county, but had chosen other water utilities as the supplier in other parts of the county. The holding of the case is simply that when a utility holds a franchise by which it has been chosen as the supplier in some but not all of the county, the Commission cannot effectively designate the utility as the supplier in those *other* parts of the county for which the county did not choose the utility as the supplier.[190]

In summary, and as already discussed in ATXI's initial brief, no court has ever taken the position that the Staff urges must be taken by the Commission in this case. All of the court cases relied upon by the Staff and the Neighbors involved area certificates and implicated the key purpose of the statute in that context: prevention of duplication of services and destructive competition for customers in a given area. Those considerations are not present here.

2. The Staff conflates the role of the state in approving franchises to use roads with the Commission's role under section 393.170.

As further support for its position that a CCN cannot be granted absent county assents, the Staff engages in a significant discussion of constitutional provisions from the 1800s and an old street railway case and other authority discussing the general proposition that the state, or some agency (*e.g.,* a county) as delegee of the state, must grant franchises for use of roads. As indicted in ATXI's initial brief, that general principle may very well be true and, for purposes of this discussion, ATXI assumes that it is. However, that does not mean that the General

[189] 379 S.W.2d 593 (Mo. 1964).
[190] *Id.* at 597, 601 (Issue was whether the area certificate was limited by the area within which the county had chosen the utility as the supplier, which the Commission had answered in the negative, after which the circuit court reversed the Commission, with the court affirming the circuit court's reversal).

Assembly has limited this Commission's authority to grant a CCN on the facts before the Commission in this case simply because the state (or its delegee) has to exercise separate franchise authority to issue what will essentially be road crossing permits. Section 229.100 applies according to its terms and requires what it requires. This Commission cannot cause it to apply if it does not otherwise apply, nor can this Commission remove its application where it does apply.

While ATXI is assuming that the Staff is right that in every single case a county must grant assents (if the line crosses a county road), the question is not as clear as the Staff suggests. As noted, the Staff cites an old street railway case at the Commission[191] that doesn't have anything to do with either section 229.100 or section 393.170. As footnote 88 in the Staff's initial brief points out, one of the Commissioners at the time was Eugene McQuillin, who was the author of *McQuillin on Municipal Corporations*, a well-known treatise on the subject. Commissioner McQuillin (who was also a former circuit court judge) was well-respected, and, interestingly (and perhaps prophetically), he weighed-in on the franchise issue as it pertains to interstate facilities like the line at issue here in the 1912 edition of his treatise. In describing the history of franchise law, he pointed out that early-on the legislature withheld the right to grant franchises, but then stated as follows:

> the tendency of modern legislation is to delegate to the local authorities the exclusive dominion over the streets of the respective municipalities, and the value of local self-government in this respect is self evident, *except perhaps where the public utility is one in which the municipality is only incidentally interested, because only a very small part of its operations are within its boundaries, as in the case of an interstate telegraph company . . . .*[192] (emphasis added).

[191] Staff Initial Brief at 22 (*citing* the 1915 *Kansas City Railways* order).
[192] *McQuillen on Municipal Corporations*, Vol. IV, §1613, p. 3357 (1912).

Commissioner McQuillin is describing a situation that is closely analogous to the one before the Commission now. It is self-evident why the General Assembly of Missouri would require consent of municipal authorities to use the roads when the municipality is much more than "incidentally interested" in the utility (*i.e.,* when it is choosing a supplier), but it is not at all self-evident that the General Assembly would so intend when the municipal authority only had an incidental interest, as in the case where the line at issue was simply passing through. In 1912, interstate electric transmission lines were unheard of, but interstate telegraph lines were not. Commissioner McQuillin's observations about those interstate telegraph lines apply with equal force to electric transmission lines now, and further demonstrate why it far less clear than the Staff suggests that the General Assembly created a scheme where this Commission would be powerless to act to grant a CCN in a case such as this, even if the local authority has not yet granted a franchise to use the roads. The General Assembly created such a scheme in a CCN case involving *area* certificates; it did not do so for a *line* certificate case like this one.

The Commission should also consider the fact that no one in this case claims that road crossing permits from the MHTC[193] are a prerequisite to the exercise of this Commission's CCN authority in a case such as this, yet there is no question but that such a road crossing permit is a "franchise," as that term has long been defined in the law.[194] Does it make any sense at all that the Commission has to subordinate the effectiveness of its public interest determination to separate decisions by up to 114 counties, but not as to what would be essentially the same kind

[193] Missouri Highways and Transportation Commission, which is a constitutionally-independent body in Missouri. Mo. Const. art. 4, §29.

[194] A "franchise" is generally understood to be a special privilege not being common to citizens generally, such as the ability to use road rights-of-way to install facilities such as utility infrastructure or other special privileges. *See, e.g., State ex rel. Hagerman v. St. Louis & E. St. L. Electric Ry. Co.*, 216 S.W.763 (Mo. 1919); *Accord,* Black's *Law Dictionary*, 5th Ed ("A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right").

of franchise from the MHTC, for an interstate transmission line such as the one at issue here? Respectfully, it does not.

3. For a company like ATXI, the Commission need not withhold a formal grant of a CCN until assents are obtained, just as it need not require that tariffs be filed with and maintained with the Commission.

The PSC Law contemplates that most public utilities regulated by the Commission will file and maintain tariffs governing service to customers in the state. However, it is undisputed in this case that such a requirement does not logically apply to ATXI because there are no such customers, just as it did not logically apply to Transource or IES. The same principle applies here. It is not logical for the law to prohibit (as the Staff claims) this Commission from effectuating as final determinations its judgment that an interstate project like this one (that, by definition, does not serve a local area but provides larger benefits to the state and the region) is necessary or convenient for the public service, is needed, is economically feasible and is in the public interest, unless and until road crossing permit decisions are made by however many county commissions may be involved in a given project.

This Commission, in this case, and many others, has agreed that it can "grant" a CCN without the utility at issue first having obtained a franchise. It did so in *Transource* and *IES*, as previously noted. It did so in the *Grand River* and *Midstate* CCN cases, as the Staff admits. It has also done so in another CCN case cited by the Staff, *Central Missouri Gas Co*., the facts of which are particularly instructive.

In *Central Missouri Gas*, the utility sought a CCN to provide gas service in the cities of Kirksville, Greentop, Queen City and Lancaster. To provide the service, it also had to construct a lateral line from an interstate pipeline in southern Iowa through the three smaller cities and on to Kirksville in order to transport the gas to those cities. There is no question but that the lateral line crossed county roads in Schuyler and Adair Counties. The Commission initially approved

the CCN for service to Kirksville and the other three cities, but only made it effective as to Kirksville since, at the time of the initial order, the utility did not yet have franchises from the three other cities. Later, in a second Report and Order (cited in the Staff's initial brief), the Commission made the CCN final, permanent and unconditional as to all four cities. While it is true that the evidence at the time was that these other three cities *intended* to grant franchises, it is undisputed that they *had not done so*. If the Staff's view of the law were correct, then the Commission erred and the CCN for those three cities was unauthorized as a matter of law.[195]

Even more relevant to the present case is the fact that there is not a shred of evidence that either Schuyler or Adair County had granted section 229.100 assents to the utility for the lateral line before the CCN was finally issued, making *Central Missouri Gas* like or much like *Transource, IES* and this case. While ATXI does not believe that that it was necessary that the counties have done so, as already discussed, the fact remains that the Commission imposed no such requirement, just as it imposed no such requirement in the *Transource* and *IES* cases.

4. The Commission has correctly already disagreed with the Staff's conclusion.

This Commission in *the case at bar* has also already disagreed with the Staff's interpretation of section 393.170. In its *Order Regarding Motion to Dismiss,* the Commission unequivocally states that "the Commission may approve the CCN before assent of the county commissions is shown, while conditioning the effectiveness of the CCN on the subsequent submission of proof that the assents have been obtained."

The Commission was correct. While ATXI has urged the Commission not to impose such a condition because it need not do so – if ATXI needs the assents it will get them and there

[195] As discussed in ATXI's initial brief and herein, these were area certificates which may indicate that there were legal infirmities in these CCNs.

is no reason for the Commission to inject itself into or subordinate its determinations to that process – ATXI agrees that *if* the Commission wanted to impose a condition it could. The Commission has done so before (in the *Frimmel, National Development, Gray's Summit and Midstate* cases cited by the Staff), but as noted, those were all *area* certificate cases.

The Neighbors claim that the Commission cannot grant the CCN and impose a condition subsequent of this type (*i.e.,* that the Commission was wrong in its earlier order in this case and in the four cases just discussed), but their claim is flawed for at least two reasons. First, even if a utility like ATXI (or like Transource or IES or Central Missouri Gas) could not construct a particular road crossing in a particular county until assent from the proper county for a particular road crossing is obtained, this would not prevent granting the CCN subject to a condition subsequent. This is because the limitation in sub-section 1 of section 393.170 is that *construction* cannot start until the CCN is granted. If construction does not start on a particular road crossing until an assent is obtained (i.e., the condition subsequent is satisfied), then granting the CCN with a condition would not in any way contravene the statute. The limitation in sub-section 2 (when it applies) is that rights under a franchise can't be exercised until there is municipal consent (*i.e.*, construction of the distribution system to be used to provide the service in that municipality, *e.g.*, a city can't start until the city chooses its supplier). Imposing a condition subsequent under sub-section 3 of section 393.170 in no way contravenes that limitation because construction simply can't start until the service supplier choice is made, at which time the condition would then be satisfied.

Consequently, the Neighbors' discussion of sub-section 2 being the more specific sub-section and its supposed control of the ability to impose conditions under sub-section 3 misses the mark. Before one ever gets to the statutory construction principle that holds that more

specific provisions control over more general ones, there must first be a *conflict* between the two provisions at issue.[196] There is no conflict here. The Commission was correct in its *Order Regarding Motion to Dismiss*. As applied to the county assents at issue in this case, the Commission *can* grant the CCN but impose a condition subsequent that must be satisfied as to a particular road crossing when an assent from the county in which the road crossing at issue is obtained or when it is otherwise shown one is not needed. ATXI urges the Commission not to impose such a condition, because doing so would unnecessarily subordinate its public interest determination about the Project to the counties. Instead, the only conditions that should be imposed on the CCN requested in this case are the agreed-upon conditions listed at pages 32 to 35 of the Staff's initial brief.

5. <u>If a condition subsequent is insisted upon, it should be narrowly tailored to mitigate the detriments a broadly-developed condition would cause</u>.

If, despite ATXI's urging, the Commission were to determine that a condition subsequent should be imposed, ATXI further urges the Commission to tailor it narrowly so that construction on the Project can proceed, except for the construction of particular road crossings for which an assent to cross those roads from the applicable county has not yet been obtained. This would allow the Project to proceed while assents and any related legal proceedings related to them are addressed. While such a condition is unnecessary and less than ideal, a more narrowly tailored condition subsequent such as this will mitigate disruption and delay of the Project, and the resulting detriments the disruption and delay would otherwise cause.[197]

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[196] *See, e.g., Ricketts v. Ricketts*, 113 S.W.3d 255, 258 (Mo. App. W.D. 2003) (stating the general rule that the specific statute controls over the general *if* there is a conflict between them and that in order to avoid finding a conflict, the two provisions should be harmonized if possible).

[197] The Commission should likewise ignore the Neighbors' specious argument that construction cannot start anywhere until all assents are obtained since ATXI can't know what roads it would cross. Neighbors' Initial Brief at 58. The counties have no authority to pick and choose the roads that may be crossed so long as ATXI agrees (as it of course is willing to do) to reasonable regulations of the counties' highway engineer to prevent interference.

Those detriments are real, as evidence adduced during the evidentiary hearings establishes. *Each year* of delay of the Project deprives Missouri of at least $97 million of benefits.[198] Moreover, there are other, less quantifiable detriments caused by delay. Wind that could otherwise develop in the Adair Wind Zone, or be imported from outside Ameren Missouri's control area, would be delayed, including the specific 400 MW wind generation facility already proposed in Schuyler County.[199] Moreover, delay upsets the careful sequencing of the MVP portfolio as a whole, leading to problems on Ameren Missouri's 161-kV system caused by the fact that the rest of the MVPs are being placed in service without the needed connections provided by Mark Twain.[200]

E. Conclusion

Transmission lines are not popular with those whose land is impacted by them or with certain groups (such as distributed solar advocates like Mr. Powers). That may be even more true for a regional transmission line like Mark Twain, which the evidence shows provides very substantial benefits to the region in addition to those it provides to Missouri specifically. A regional transmission line, on its face, provides those benefits in a manner that may appear to some to be different (and perhaps more indirect) than benefits provided by a more "traditional" transmission line that runs from power plant A located in Missouri to load center B also located in Missouri. However, that does not mean there are no benefits for Missouri. Instead, it means that the benefits manifest themselves in a different way, such as greater optionality for utilities to

[198] Exh. 21, Sch. TS-03, Table 2; Tr., Vol. 5, p. 159, l. 3-8.
[199] Tr., Vol. 5, p. 193, l. 2 – p. 194, l. 5; p. 196, l. 23 – p. 197, l. 2.
[200] *Id.*, p. 199, l. 10 – p. 201, l. 5 (Mr. Kramer explaining the reliability concerns and additional costs, which would not be regionally allocated, imposed on Ameren Missouri if the planned sequencing of the MVPs are upset by a delay in the Mark Twain Project).

meet their needs in providing service, including state and federal energy mandates and policies, and by more effectively and efficiently moving power from where it will be generated to load.

The electric supply business is changing, moving away from central station generation located only close to load to generation sources located in places like those energy zones identified by MISO located across MISO's footprint. The fact is that the transmission system that was built in the 1950s to 1970s was not designed for the needs of today. The MVPs are designed to meet the needs of today and of decades to come. Those needs are different and they may not be as well understood by affected landowners, but they are no less real.

In summary, the evidence is overwhelming that the Project is in the public interest; is necessary or convenient for the public service; and otherwise satisfies all of the *Tartan* criteria. It should be approved, subject only to the conditions agreed upon with the Staff, save Staff's original condition 2 (as identified in Mr. Beck's rebuttal testimony) respecting assents which is unnecessary and proposed by the Staff based upon an incorrect reading and understanding of the law.

WHEREFORE, ATXI respectfully submits its initial post-hearing reply brief, and requests that the Commission enter its order granting it a line certificate for the Project, subject only to the agreed-upon conditions listed in the Staff's initial brief.

Respectfully submitted,
/s/ James B. Lowery

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Statements of Position has been e-mailed, this 18th day of March, 2016, to counsel for all parties of record.

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