

IN THE CIRCUIT COURT OF KNOX COUNTY, MISSOURI

AMEREN TRANSMISSION COMPANY)
OF ILLINOIS,)

Relator,)

v.)

Case No. _____

KNOX COUNTY COMMISSION)
and its Commissioners)

EVAN GLASGOW, MICHAEL FOX,)
and ROGER PARTON, each in their)
official capacity,)

Respondents.)

Petition

Relator Ameren Transmission Company of Illinois (“ATXI”), pursuant to section 536.150, RSMo.,¹ brings this action for judicial review of the denial by the Knox County Commission (“Commission”) to issue an assent to ATXI permitting ATXI to suspend and maintain transmission wires and related facilities across the public roads and highways of Knox County. In support of its petition, ATXI states as follows:

Introduction

1. This action arises out of the Commission’s September 30, 2016 decision to deny ATXI’s request for a county assent pursuant to section 229.100, RSMo. The requested assent would allow ATXI to suspend and maintain transmission wires and

¹ Statutory references are to the Revised Statutes of Missouri (2000), unless otherwise noted.

related facilities across the public roads or highways of Knox County for the Mark Twain Transmission Line Project.

2. The Mark Twain Transmission Line Project is a 345-kV electric transmission line approximately 95 miles in length and running generally from a switching station near Palmyra, Missouri, and extending through Marion, Shelby, Knox and Adair counties to a new substation located near Kirksville, Missouri (the Zachary Substation), and then proceeding north through Schuyler County, Missouri, to a connection point on the Iowa border. The project also involves a 2.2-mile 161-kV connector line from the Zachary Substation to Ameren Missouri's existing Adair Substation.

3. On April 27, 2016, the Missouri Public Service Commission ("PSC") granted a Certificate of Convenience and Necessity to ATXI, recognizing that the Mark Twain Transmission Line Project is in the public interest and authorizing ATXI to construct an electric transmission line in northeast Missouri and, specifically, in Knox County, subject to all affected counties granting ATXI an assent under section 229.100, RSMo.

4. The Commission's denial of ATXI's request for an assent was unlawful, arbitrary, capricious, unreasonable, and an abuse of discretion.

5. This Court must remedy the Commission's wrongful denial of an assent to ATXI by mandating that the Commission grant ATXI an assent allowing ATXI to hang or suspend transmission wires and related facilities over Knox County roads and highways.

Parties

6. Relator ATXI is a corporation organized under the laws of Illinois with its principal office at 1901 Chouteau Avenue, St. Louis, Missouri. ATXI is duly authorized to conduct business in Missouri. ATXI constructs and maintains interstate electric transmission lines under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) and, in Missouri, the PSC.

7. Respondent Knox County Commission is a public governmental body organized under Chapter 49 of the Missouri Revised Statutes, with its principal place of business at 107 North 4th Street, Edina, Knox County, Missouri.

8. Respondent Evan Glasgow is and was at all relevant times the Presiding Commissioner of the Commission and is being sued in his official capacity. Commissioner Glasgow may be served with process at 107 North 4th Street, Edina, Knox County, Missouri.

9. Respondent Michael Fox is the Eastern District Commissioner of the Commission and was appointed to that office on February 9, 2015. Commissioner Fox is being sued in his official capacity. Commissioner Fox may be served with process at 107 North 4th Street, Edina, Knox County, Missouri.

10. Respondent Roger Parton is and was at all relevant times the Western District Commissioner of the Commission and is being sued in his official capacity. Commissioner Parton may be served with process at 107 North 4th Street, Edina, Knox County, Missouri.

Jurisdiction and Venue

6. This court has jurisdiction over this action pursuant to sections 49.230 and 536.150, RSMo. and Art. V, § 18 of the Missouri Constitution.

7. Venue is proper in this Court because the Commission and the property at issue are located in Knox County.

Statement of Facts

The Mark Twain Transmission Line Project

8. The Mark Twain Transmission Line Project (“Mark Twain”) consists of approximately 95 miles of new 345-kV electric transmission line, a 2.2-mile 161-kV connector line and a substation in northeast Missouri. The 345-kV transmission line is routed from the Maywood Switching Station near Palmyra, Missouri, through Marion, Shelby, Knox and Adair counties to the new Zachary Substation, located near Kirksville, Missouri. The line then continues north through Adair and Schuyler counties to the Iowa border. The 345-kV transmission line will primarily consist of single-shaft, self-supported steel poles, 90-130 feet in height, within a 150-foot permanent right-of-way corridor. The 2.2 mile 161-kV line will connect the Zachary Substation with the existing Adair Substation. Right-of-way along this section will generally be 100 feet in width.

9. Mark Twain is the result of a study conducted by the Midcontinent Independent System Operator, Inc. (“MISO”), an independent, not-for-profit, and FERC-approved Regional Transmission Organization responsible for regional transmission planning, reliability assurance and managing competitive electricity markets across all or

parts of 15 states, including a significant portion of Missouri, including that part of Missouri where Mark Twain is to be constructed. Mark Twain is one of the transmission projects identified by MISO in 2011 as necessary to increase overall reliability and efficiency of the regional transmission grid, meet public policy demands for renewable energy, and provide economic benefits in excess of costs.

10. Route selection for the 95-mile long Project was a year-long process that involved the selection of various route alternatives, consideration of public input through open houses, questionnaires and on-line comments, and consideration of several factors (including, for example, avoidance of residential areas and minimization of impacts to natural resources and the environment, etc.). The final route was selected because it would minimize the overall social and environmental impacts of Mark Twain while providing a reasonable and economical route for design and construction.

The PSC: Mark Twain is in the Public Interest of Missourians

11. On May 29, 2015, ATXI applied to the PSC for a Certificate of Convenience and Necessity (“CCN”) to build Mark Twain. Parties to that CCN proceeding included the Office of Public Counsel, charged with representing the public and the interests of utility customers in proceedings before the PSC, and Neighbors United Against Ameren’s Power Line (“Neighbors United”), a citizens group organized to oppose Mark Twain.

12. The PSC held an evidentiary hearing on January 25-29, 2016, at which time all parties presented evidence on whether Mark Twain was “necessary or convenient for

the public service” within the meaning of that phrase in section 393.170, RSMo. At hearing, the PSC heard testimony from experts on the reliability concerns to be addressed by Mark Twain, the local and regional operational and economic benefits of the Project, route selection, its effect on agricultural operations, human health and the environment, and the construction and operation of Mark Twain.

13. Following the hearing, the PSC found that ATXI was a public utility and had demonstrated it was entitled to a CCN for Mark Twain, in part because the public interest would be served by its construction—notably, that Missouri ratepayers would benefit from Mark Twain. The PSC specifically determined that Mark Twain was in the public interest because it would promote grid reliability, relieve congestion, promote the use of renewable energy to meet statutory mandates, meet local load-serving needs, and provide downward pressure on customer rates.

14. Based upon evidence presented at the hearing, the PSC also determined that Mark Twain did not generate electromagnetic field (“EMF”) levels that would pose a threat to human health or the environment, that Mark Twain’s route properly considered environmental concerns and areas where Amish and Mennonite communities were located, that the Project’s impact on farming operations during both its construction and operation was minimal, and that any loss in fair market value of property due to a transmission line easement was something properly considered in the appraisal process in any necessary condemnation cases.

15. In its April 27, 2016 Report & Order, the PSC granted ATXI a CCN for Mark Twain contingent upon ATXI providing certified copies of county assents under section 229.100, RSMo. for the Project in the five affected counties—Marion, Shelby, Knox, Adair and Schuyler, along with certain other conditions not relevant to this action.

16. Section 229.100, RSMo., the statutory provision that provides counties authority to grant assents where a utility does not unreasonably interfere with the use of county roads, highways and rights-of-way, states:

Improvements along public roads—location—control.

229.100. No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

(RSMo. 1939 § 8573).

The Knox County Commission's Pre-Judgment of the Mark Twain Project

17. Well before ATXI made its request for a CCN, ATXI representatives first met with the Commission on June 13, 2014. At the meeting, ATXI representatives provided the Commission with a description of the Project and its benefits and answered questions posed by the Commissioners. On August 6, 2014, Commissioners attended a community forum about Mark Twain hosted by ATXI, at which time ATXI also provided information regarding the Project and answered questions.

18. On October 17, 2014, the Commission adopted Resolution #2014-1, a resolution in opposition of the Mark Twain Project that was proposed by members of Neighbors United. Despite resolution language stating that Knox County citizens would be negatively impacted by the Project, that the Project posed hazards to human and animal health because of EMF, that real estate values would substantially decrease, that economic livelihoods would be devastated, and that there was a “critical need” to protect Knox County citizens from ATXI’s exercise of eminent domain, the Commission did not notify ATXI that it was considering the resolution nor did it request that ATXI attend the Commission meeting to address the concerns raised in the resolution. Moreover, upon information and belief, the Commission received no testimony from any expert with regard to factual allegations contained in the resolution.

19. On June 19, 2015, the Commission held a meeting to garner public testimony to support opposition to Mark Twain. In addition to seeking public comments, the Commissioners provided opportunity for citizens to write down their comments opposing the Project.

20. When Neighbors United asked the Commission to oppose ATXI’s application for a CCN with the PSC, the Commission drafted a letter to the PSC stating each commissioner’s opposition to Mark Twain on June 22, 2015. The Commission had the County Clerk send the June 22, 2015 letter to the PSC, along with its October 17, 2014 Resolution 2014-1, and the comments opposing the Project it had gathered on June 19, 2015. The Commission’s letter is nearly identical to the Adair County Commission’s

letter dated June 15, 2015, which had been faxed to the Commission by Adair County Commissioner Thompson on June 15, 2015.

21. Following the grant of a CCN to ATXI for Mark Twain on April 27, 2016, the Commission continued to oppose Mark Twain and, more particularly, oppose the grant of an assent for the Project. Specifically, the Commissioners told a citizen at the May 23, 2016 Commission meeting that they had “not changed their decision [with regard to “Ameren Transmission Line”], and that they would “NOT give their consent” for an assent. In addition, Knox County Commissioners Glasgow and Parton attended a meeting hosted for all five county commissions by the Shelby County Commission on September 1, 2016. The purpose of the meeting with the other county commissioners was to reaffirm each commission’s opposition to Mark Twain and to encourage each commission to “follow it [opposition] all the way” if ATXI brought suit against a county. Commissioner Glasgow also attended a September 8, 2016 meeting of the Shelby County Commission, and both Commissioner Glasgow and Commissioner Parton attended the September 15, 2016 meeting of the Shelby County Commission and the September 19, 2016 meeting of the Marion County Commission in support of the Commission’s opposition to Mark Twain.

The Commission’s Denial of an Assent for Mark Twain

22. On or about August 9, 2016, and in order to inform the Commission regarding the specifics of the Project and the benefits that would accrue to Knox County residents and Missouri residents, ATXI provided to each commissioner the PSC’s April

27, 2016 Report & Order (which concluded that the evidence did not support the concerns raised by Neighbors United), a copy of section 229.100, RSMo. (the assent statute), a report depicting all county roads to be crossed by Mark Twain, a copy of the line design engineer's testimony from the CCN case regarding the specific design of the transmission line, a copy of ATXI's standards and procedures for construction, repair and maintenance of the Mark Twain right-of-way, and a proposed draft ordinance granting the assent.

23. After ATXI provided these materials to the commissioners, ATXI representatives followed up with the Commission to see if additional information was needed so that the commissioners would be fully informed. ATXI also requested individual meetings with the commissioners, which the commissioners declined.

24. On September 30, 2016, ATXI appeared before the Commission to formally request that it be given an assent to maintain wires and related facilities required by Mark Twain across Knox County roads and highways. ATXI's assent request only sought the County's assent to hang or suspend and maintain transmission wires and related facilities above the county roadways and highways and sought no permission to place any poles or other structures within county rights-of-way since all such poles and structures will be located on private land under easements to be obtained for the Project. Moreover, ATXI provided information demonstrating that the design of the Project complied with National Electrical Safety Code and Missouri Department of Transportation crossing requirements and that the public's use of the roadways would

not be obstructed or diminished by the suspension of transmission wires and related facilities above county roads and highways.

25. Upon information and belief, at the time of ATXI's request, the Commission had granted assents to other utilities, including electric utilities, to hang or suspend and maintain transmission and distribution wires across county roadways and highways—even in instances where poles or similar structures were located in the county right-of-way as long as those lines and related facilities did not obstruct the public's use of these rights-of way. Upon information and belief, concerns regarding the effect of the transmission line on health and the human environment, the use of eminent domain, or the effect on agricultural practices were not considered by the Commission when it determined other assent requests.

26. Despite the fact that the Commission voiced no concerns about ATXI's proposed use of Knox County roads or rights-of-way, the Commission voted on September 30, 2016, to deny ATXI's request. Commissioners Parton and Fox voted in favor of denying the assent; Commissioner Glasgow did not vote but announced that the assent was denied.

Count I - For Administrative Review under section 536.150, RSMo.:
The Commission's denial of the assent is unconstitutional, unlawful, invalid, unreasonable, arbitrary, capricious, and constitutes an abuse of discretion.

27. Paragraphs 1-26 are incorporated herein by reference as if fully set forth.

28. The Commission's denial of ATXI's request for an assent is unconstitutional, unlawful, invalid, unreasonable, arbitrary, capricious, and constitutes an abuse of discretion in that:

- a. Section 229.100, RSMo. allows counties to act as the primary administrative authority over county roads and highways so as to prevent obstruction of or impediments to the use of those roads and highways; consequently, the Commission's denial of an assent to ATXI was arbitrary, capricious and involved an abuse of discretion in that the Commission categorically refused to consider the fact that Mark Twain would not interfere with or obstruct the public's use and enjoyment of Knox County roads and highways.
- b. Prior to their decision to deny ATXI an assent for Mark Twain, the Commission, upon information and belief, had granted assents to other electric utilities, allowing these utilities to suspend or hang transmission wires over county roads, highways and rights-of-way without exception where those wires did not interfere with or obstruct the public's use and enjoyment of the roads, highways or rights-of way; as a result, the Commission's denial of ATXI's assent application violates Article I, Section 2 of the Missouri Constitution and the Fourteenth Amendment to the United States Constitution in that the Commission treated ATXI differently than all other similarly situated applicants without any rational basis to do so.

- c. The Commission's denial of ATXI's assent application is arbitrary and capricious because the Commission refused to apply the assent statute to ATXI as it had been applied to all other similarly-situated applicants.
- d. The Commission's denial of ATXI's assent application is unreasonable, unlawful and an abuse of discretion such that it shocks the sense of justice and indicates a lack of careful, deliberate consideration in that the Commissioners actively opposed Mark Twain years before ATXI's assent application was formally requested as evidenced by, among other things, the Commission's early adoption of a resolution against the Project, without affording ATXI any opportunity to present evidence or testimony to refute factual allegations asserted by its opponents, and the Commission's active opposition to the PSC's granting of a CCN.

29. As a direct and proximate result of Respondents' abuse of discretion and the Commission's arbitrary, capricious, unconstitutional, unreasonable and unlawful denial of ATXI's assent application, ATXI has suffered and will continue to suffer immediate and irreparable injury, loss or damage in the absence of relief for which there is no adequate remedy at law.

30. Section 49.230, RSMo. authorizes appeals from the decisions, findings and orders of county commissions under the provisions of Chapter 536. Under section 536.150, the Court is authorized to conduct judicial review of the Commission's denial of ATXI's assent application because the Commission is a body existing by statute, its

decision is not subject to administrative review and there is no other provision for judicial inquiry into or review of its decision.

31. This Court is authorized in such an action to determine the facts relevant to the questions presented and to determine if the Commission's refusal to grant the requested assent was unconstitutional, unlawful, unreasonable, arbitrary, capricious or involved an abuse of discretion and to order the body to take such action as it may be proper to require.

WHEREFORE, ATXI respectfully requests that this Court find the denial of ATXI's assent application to be unconstitutional, unlawful, arbitrary, capricious, unreasonable and that it constitutes an abuse of discretion and order the Commission to reverse its decision to deny ATXI's assent application; order, adjudge and decree Respondents to immediately grant ATXI an assent for Mark Twain thereby allowing ATXI to hang or suspend and maintain transmission wires and related facilities over Knox County roads and highways; grant ATXI its costs; and order such other relief as this Court may deem just and proper.

Count II - For Administrative Review under section 536.150, RSMo.:
The County Commission's denial of the assent exceeds its jurisdictional authority.

32. Paragraphs 1-31 are incorporated herein by reference as if fully set forth.

33. Outside of the management of the fiscal affairs of the county, county commissions possess no powers except those conferred by statute.

34. The Missouri General Assembly manifested its legislative intent that the PSC act as the primary regulatory authority over public utilities in the state, and county commissions lack the jurisdictional authority to usurp the PSC's legislatively-delegated authority over those public utilities.

35. Section 229.100, RSMo. authorizes a county commission to exercise jurisdiction over county roadways, highways, and county rights-of-way to the extent that a utility line or pole obstructs the public's use of those roadways, highways, or county rights-of-way.

36. Eminent domain powers are delegated to electric utilities by the State pursuant to section 523.010, RSMo, and county commissions possess no authority to deprive an electric utility from exercising those eminent domain powers, which ATXI has not yet exercised in conjunction with the Project.

37. The Commission's denial of ATXI's request for an assent exceeds its jurisdictional authority in that:

- a. The Commission's denial in this case disregards the PSC finding that the Project was needed and beneficial to Missouri citizens and, as a result, conflicts with and unlawfully usurps the jurisdiction of the PSC and its regulation and control of those matters;
- b. The Commission's denial in this case, to the extent that it was based on arguments made by Neighbors United that it reduces property values, excessively interferes with farming practices, and/or poses a threat to human

- health and the environment, conflicts with and unlawfully invades the jurisdiction of the PSC and its regulation and control of those matters;
- c. The Commission's denial in this case, to the extent that it was based upon its opposition to ATXI's ability to exercise eminent domain powers, exceeds its jurisdiction in that the Commission does not have the jurisdiction to prohibit ATXI from exercising eminent domain powers delegated by the State; and
 - d. The Commission's denial in this case exceeds its jurisdiction in that ATXI is not obstructing public use of any county road, highway or right-of-way.

38. Section 49.230, RSMo. authorizes appeals from the decisions, findings and orders of county commissions under the provisions of Chapter 536. Under section 536.150, the Court is authorized to conduct judicial review of the Commission's denial of ATXI's assent application because the Commission is a body existing by statute, its decision is not subject to administrative review and there is no other provision for judicial inquiry into or review of its decision.

39. This Court is authorized in such an action to determine the facts relevant to the questions presented and to determine if the Commission's refusal to grant the requested assent exceeded its jurisdiction, and to order the body to take such action as it may be proper to require.

WHEREFORE, ATXI respectfully requests that this Court find that the denial of ATXI's assent application exceeded the Commission's jurisdiction and order the Commission to reverse its decision to deny ATXI's assent application; order, adjudge and

decree Respondents to immediately grant ATXI an assent for Mark Twain thereby allowing ATXI to hang or suspend and maintain transmission wires and related facilities over Knox County roads and highways; grant ATXI its costs; and order such other relief as this Court may deem just and proper.

Count III -42 U.S.C. § 1983:
The Commission's violation of ATXI's Equal Protection Rights

40. Paragraphs 1-39 are incorporated herein by reference as if fully set forth.
41. In addition to the above allegations, ATXI brings this Count III pursuant to 42 U.S.C. § 1983 to enforce Constitutional rights guaranteed under the Fourteenth Amendment to the United States Constitution.
42. Section 229.100, RSMo. authorizes Respondents to grant ATXI's assent application.
43. Respondents have arbitrarily, capriciously, unlawfully and unconstitutionally applied the assent statute to deny ATXI's assent application.
44. The assent statute, as applied to ATXI by Respondents, treats ATXI differently from other similarly-situated utilities that are allowed to hang or suspend transmission wires across county roads, highways and rights-of-way in Knox County in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.
45. There is no rational basis for the Respondents' disparate application of the assent statute.

46. Respondent Commissioners intended to deprive ATXI of its constitutionally protected right of equal protection guaranteed by the Fourteenth Amendment to the United States Constitution by applying the assent statute to ATXI's assent application in a manner different than other similar assent applications, and their decision was officially adopted by the Respondent Commission.

47. The assent statute, as applied to ATXI by Respondents, prohibits ATXI from continuing with construction of Mark Twain in Knox County.

48. Respondents' disparate application of the assent statute to deny ATXI's assent application was done under color of law and violates clearly established principles of constitutional law.

49. As a direct and proximate result of Respondents' actions, ATXI has been deprived of its constitutionally protected Fourteenth Amendment rights and has been damaged, including amounts for attorneys' fees and costs.

50. WHEREFORE, ATXI respectfully requests that this Court find that the denial of ATXI's assent application to be unconstitutional, order the Commission to reverse its decision to deny ATXI's assent application; order Respondents to immediately grant ATXI an assent for Mark Twain thereby allowing ATXI to hang or suspend and maintain transmission wires and other related facilities over Knox County roads and highways; grant ATXI its damages in a fair and just amount, including its attorney's fees and costs; and order such other relief as this Court may deem just and proper.

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