

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

AMEREN TRANSMISSION)	
COMPANY OF ILLINOIS,)	
)	Cause No. 12AC-CC00499
Plaintiff,)	
)	Div. 2
vs.)	
)	October 6, 2014
PUBLIC SERVICE COMMISSION)	
OF MISSOURI,)	
)	
Defendant.)	
)	

MOTION TO INTERVENE

COME NOW Gena Briggs and Billy Briggs, David Schaefer and Beth Schaefer, Margaret Hollenbeck, Clifford Hollenbeck and Aaron Hollenbeck, Richard and Jeanette Gregory and William and Kamra DeFries (“Movants”) and for their Motion to Intervene, state to the Court as follows:

1. Movants are the fee simple owners of various properties located within the County of Adair, Missouri and move to intervene in the current action as defendants to Count II of the Plaintiff’s First Amended Petition for Declaratory Judgment. The Movants seek to file and pursue the accompanying “Motion to Dismiss” should the Court grant this Motion to Intervene.

2. The current litigation is for declaratory judgment initiated by the Plaintiff, a foreign corporation existing under the laws of the state of Illinois, against the Missouri Public Service Commission, a state governmental agency.

3. In its First Amended Petition, the Plaintiff seeks relief under two counts, as follows:

a. COUNT I: A declaration that the Plaintiff is not subject to the regulation or control of the Defendant in connection with the Defendant's operation and construction of two high-voltage power line projects within the State of Missouri known as the "Mark Twain Project" and the "Illinois Rivers Project."

b. COUNT II: A declaration that the Defendant does not have siting authority as to the construction and location of the above-referenced projects including and based upon allegations that the Plaintiff has authority to construct the aforementioned projects through the use of eminent domain without first obtaining approval for the projects or receiving the designation as a public utility from the Defendant.

4. On or around the month of July 2014, Movants received written notices from the Plaintiff or its designees that their Movants' may be impacted by the aforementioned Mark Twain Transmission project. During public meetings conducted by the Plaintiff, the Movants were provided information that construction of the Mark Twain Transmission project may require their properties to be subject to a utility easement.

5. Pursuant to Missouri Supreme Court Rule 52.12, "anyone shall be permitted to intervene in an action: ... (2) *when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.*"

6. The movants satisfy the requirements of Rule 52.12:

a. Interest in the transaction that is the subject of the action: Count II of this action relates to the right of Plaintiff to construct and use eminent domain to acquire land for its Mark Twain Transmission project. On the basis that Plaintiff has notified the Movants that the project may cross their properties, Movants have a direct interest in the disposition of Count II.

b. Disposition of the action may impair Movant's ability to protect their interests: As stated in more detail in the accompanying Motion to Dismiss, the Movants are property owners identified by the Plaintiff as possibly being subjected to Plaintiff's future power line easement and potential eminent domain actions initiated by the Plaintiff. At the time of such eminent domain actions, the Movants may seek to challenge the Plaintiff's authority to initiate condemnation proceedings. A ruling in this matter regarding the Plaintiff's authority to use eminent domain in any circumstance may be asserted by the Plaintiff to impede or thwart the Movant's possible defenses in future condemnation proceedings.

c. The Movants' interests are not adequately represented in this matter. While the Defendant Public Service Commission is represented by knowledgeable and capable counsel, the PSC has no direct interest in the outcome of Count II of Plaintiff's Amended Petition. Count I of this action challenges the PSC's jurisdiction and authority. Count II, however, affects the rights of the Movants and other property owners similarly situated and not named in this action. The PSC does not have the authority to grant, modify, limit or expand the use of eminent domain for utility purposes. Those powers

are governed by statute. The PSC, therefore, has no direct interest in the outcome of Count II of the action and should not be deemed or required to protect the interests of private property owners potentially affected by the Plaintiff's proposed projects.

7. This application is made in a timely manner: While this litigation has proceeded for over a year, the Movants were not in a position to know of its existence nor that it may have potential negative impacts on their rights. The Plaintiff was in the best position to know the location of its projects and the property owners who may be impacted by them. The Plaintiff used its resources to notify the Movants and hundreds of other property owners about the Mark Twain Project in July 2014 but did not use this information to notify them of the pending litigation and the possible negative impacts it may have on their ability to defend future condemnation actions.

8. Upon Movants' best information and belief hundreds of similarly situated property owners exist along the proposed power line projects that Plaintiff seeks to construct.

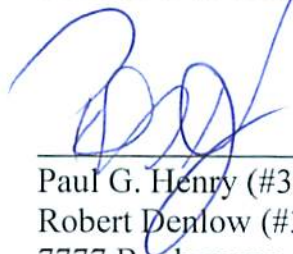
9. The only relief sought by Movants is for the dismissal of Count II of the Plaintiff's First Amended Petition. The authority of Plaintiff to acquire their land through eminent domain proceedings must be judicially determined in a manner that meets the requirement of due process. "The Fifth Amendment guarantees that no person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation. Under the Fourteenth Amendment, these protections apply to actions taken by the states. Likewise, Article I, Section 10 of the Missouri Constitution provides that "no person shall be deprived of life, liberty or

property without due process of law” and Article I, Section 26 requires that “private property shall not be taken for public use without just compensation.” ... [T]hese provisions give rise to two distinct constitutional rights: the right to due process of law and the right to compensation.... The right to due process includes the ... right to notice and an opportunity to be heard.” *Bi-State Dev. Agency of Missouri-Illinois Metro. Dist. v. Nikodem*, 859 S.W.2d 775, 778-79 (Mo. Ct. App. 1993)(See also, *City of Excelsior Springs v. Elms Redevelopment Corp.*, 18 S.W.3d 53, 58 (Mo. Ct. App. 2000)) Through this intervention, the Movants seek to assert their due process right to be heard to defend their rights under the Fifth Amendment.

WHEREFORE, Movants pray the Court to allow their intervention in this litigation, and for such other and further courts as the Court deems just and proper.

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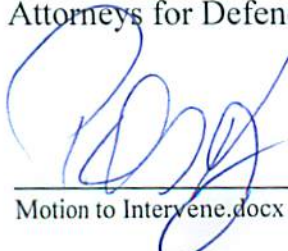
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served by operation of the Missouri Electronic Filing Rules of the Missouri Supreme Court (if applicable), or by fax or by U.S. Mail, first class, postage fully prepaid, this 6th day of October, 20 to:

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