

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER COMPANY, )  
d/b/a AmerenIP, and )  
AMEREN ILLINOIS TRANSMISSION COMPANY )  
)  
Petition for (i) a Certificate of Public Convenience )  
and Necessity, pursuant to Section 8-406(a) of the )  
Public Utilities Act; (ii) a Certificate of Public )  
Convenience and Necessity, pursuant to Section 8- )  
406 of the Public Utilities Act, authorizing )  
construction, operation and maintenance of new )  
345,000 volt electric lines in Monroe, Randolph, St. )  
Clair, and Washington Counties, Illinois; (iii) an )  
order pursuant to Section 8-503 of the Public )  
Utilities Act approving construction of new )  
transmission facilities; (iv) approval of an )  
Agreement between affiliated interests; and (v) )  
other relief as may be necessary. )

Docket No. 06-0179

**DRAFT ORDER**

Dated: January 8, 2007

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## I. PROCEDURAL HISTORY

Illinois Power Company d/b/a AmerenIP ("AmerenIP") and Ameren Illinois Transmission Company ("Ameren Transco," together, "Petitioners") filed a Petition on March 3, 2006 seeking (i) issuance by the Illinois Commerce Commission ("Commission") of a Certificate of Public Convenience and Necessity ("Certificate") pursuant to § 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/8-406, authorizing AmerenIP and Ameren Transco to construct, operate, and maintain new 345 kilovolt ("kV") electric lines ("Transmission Lines") and related facilities in Monroe, Randolph, St. Clair, and Washington Counties, Illinois (the "Project"); (ii) issuance by the Commission of a Certificate pursuant to Section 8-406(a) of the Act authorizing Ameren Transco to operate as a public utility; (iii) an order approving the Project pursuant to Section 8-503 of the Act; and (iv) approval, pursuant to Sections 7-101 and 7-102 of the Act, 220 ILCS 5/7-101 & 5/7-102, of a Joint Ownership Agreement ("JOA") between AmerenIP and Ameren Transco. Petitioners filed an Amended Petition on May 9, 2006,

Petitions to Intervene were filed by Prairie State Generating Company, LLC ("Prairie State"), Dynegy Midwest Generation ("Dynegy"), Unions 51, 309, 649, 702 and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"), the City of Red Bud and the Village of Baldwin ("Baldwin"). Petitions to Intervene were also filed by the following "Landowner Interveners": William C. & Patricia L. Hogan, Phyllis J. Bixby, Elsa C. Kloepper, Virgil & Rosalie Chandler, Earl Falkenhain, Karnal C. & Elizabeth A. Phegley, Roger Roscow, Marvin Rosenberg, Evelyn Schwartzkopf, Harry P. Wetzell, Ronald H. Wirth, Ralph & Karen Buettner, and Omer H. & Neva L. Liefer (together, the "Baldwin/Stringtown Interveners"); and Charles & Joan Frederick, Edith Boling, Troy A. Guebert, Harlin F. Guebert, Richard Stadter & Eugene Stadter, Ronald & Betty Fehr, Gary Liefer, Lucas H. Liefer, Margarett Schrader, Anthony & Rachel Steibel, Thomas & Annette Steibel, Jeffrey H. Guebert, John G. Perkowski, Scott Redohl & Janice Redohl (England), Thomas & Tammy Vogt, Derrick Huebner (Huebner Development Corporation), David Rippelmeyer, Leo Fulton, Jr., Kenneth & Sandra Schultheis, Dannie & Carolyn Pigg, George Obernagel, III, Kenneth Hartman, Jr., James & Connie Seboldt, Mark & Brenda Seboldt, Merrill W. Prange, and Michael Sabo (Mr. Sabo withdrew from the case on December 14, 2006.)

Concurrently with their Petition, Petitioners filed the Direct Testimonies of Kiritkumar S. Shah, Tracy J. Dencker, Geoffrey M. Jones and Lee R. Nickloy. With their Amended Petition, Petitioners filed Supplemental Direct Testimony of Mr. Shah, Ms. Dencker, and Mr. Jones.

Merrill Prange filed a Statement of Position on May 30, 2006. On July 13, 2006, Staff of the Commission ("Staff") filed the Direct Testimonies of Ronald Linkenback, Phil A. Hardas, Dianna Hathhorn and David Rearden. On that day, IBEW filed the Direct Testimony of Daniel F. Miller and Dynegy Filed the Direct Testimony of Gregory A. Mason. Also on that day, all of the Baldwin Stringtown Interveners (except the Buettners) filed Direct Testimony. In addition, or about that date, the following

Interveners filed testimony or Statements of Position that were ultimately entered into the record: David Ripplemeyer, Thomas and Tammy Vogt, Kenneth Hartman and George Obernagel, Kenneth and Sandra Schultheis, Dannie and Carolyn Pigg, and Mark and James Seboldt.

Statements of Position were filed by Leo Fulton Jr. on July 24, 2006, Martha Church and Margarett Schrader August 22, 2006, Ronald and Betty Fehr on September 1, 2006, Jeffrey Guebert on September 29, 2006, and Edith Boling on October 5, 2006.

Petitioners filed the Rebuttal Testimony of Mr. Shah, Ms. Dencker, Mr. Jones, Mr. Nickloy, Gary S. Weiss, and Roger Cruse on October 16, 2006

Rebuttal Testimony was filed by Omer H. Liefer on November 16, 2006. On November 17, 2006, Staff filed the Rebuttal Testimony of Mr. Linkenback, Mr. Hardas and Mr. Rearden. On that date Dynegy filed the Rebuttal Testimony of Mr. Mason and IBEW filed the Rebuttal Testimony of Mr. Miller.

On December 1, 2006, Petitioners filed the Surrebuttal Testimony of Ms. Dencker, Mr. Jones, Mr. Nickloy, and Mr. Weiss

Pursuant to proper legal notice, an evidentiary hearing was held in this matter before a duly authorized Administrative Law Judge of the Commission on December 15, 2006. Appearances were entered by counsel on behalf of the Petitioners, Baldwin/Stringtown Interveners, Prairie State, IBEW, Staff and Dynegy. At the conclusion of the hearing on December 15, 2006, the record was marked "Heard and Taken."

Initial briefs and reply briefs were filed by the Petitioners, Baldwin/Stringtown Interveners, Prairie State, IBEW, Staff and Dynegy. A Proposed Order was filed by Petitioners on January 8, 2007.

## **II. APPLICABLE STATUTORY AUTHORITY**

Section 8-406 of the Act governs the issuance of a Certificate in this matter. Specifically, Section 8-406(b) of the Act provides:

No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide

adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-503 provides, in part, that:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order....

### **III. BACKGROUND**

AmerenIP is a public utility within the meaning of § 3-105 of the Act, 220 ILCS 5/3-105, is an electric utility within the meaning of § 16-102 of the Act, 220 ILCS 5/16-102, and is engaged in the business of supplying electric power and energy throughout its certificated service territory within the State of Illinois. AmerenIP is a wholly-owned subsidiary of Ameren Corporation. Ameren Transco is a newly-formed Illinois corporation that Petitioners propose will fund, construct and operate the Project in conjunction with AmerenIP. Ameren Transco is a wholly-owned subsidiary of Ameren Corporation. Ameren Transco seeks a Certificate to operate as a public utility under the Act.

AmerenIP has been notified by Prairie State Generating Company, LLC ("Prairie State"), an independent power producer, that it is developing an electric generating facility near Lively Grove, located along the western edge of Washington County, Illinois ("Prairie State Facility"). Pursuant to Federal Energy Regulatory Commission ("FERC") Order No. 2003, and other tariff requirements, AmerenIP is required to provide nondiscriminatory, standardized generator interconnection service to any generator that requests to connect, and therefore AmerenIP is obligated to supply generator interconnection service to the Prairie State Facility. (AmerenIP Ex. 1.0, p. 5.) Under the FERC rules, AmerenIP must also ensure that the required upgrades to the transmission system are built to accommodate such interconnection. The Transmission Lines and associated upgrades of the Project related to the request to connect the Prairie State Facility to the AmerenIP transmission system represent the Petitioners' proposed optimal set of transmission upgrades necessary to meet the NERC Reliability Standards and Ameren's Planning Criteria filed with FERC. (AmerenIP Ex. 1.0, p. 25.)

The Project will consist of three new 345 kV transmission lines and related facilities. The first line will be approximately one mile in length from the Prairie State Facility south to AmerenIP's existing Baldwin-Mt. Vernon 345 kV line (the "Prairie South Line"). The second line will be approximately 7.2 miles in length from the Prairie State Facility west to AmerenIP's existing Baldwin-Stallings 345 kV line (the "Prairie West Line"). These two combined lines will be double circuited, so that the existing AmerenIP lines will be routed in and out of the new switchyard ("Prairie State Switchyard") at the Prairie State Facility. The third line will be approximately 27.1 miles in length from AmerenIP's Baldwin switchyard, near Baldwin, Illinois, to AmerenUE's Rush Island Power Station, located on the west bank of the Mississippi River directly across from Fults, Illinois (the "Baldwin-Rush Line"). The proposed transmission lines will be located primarily in AmerenIP's service area near Sparta, Illinois and their general location is shown in AmerenIP Exhibit 5.1 (the three lines are collectively referred to as the "Transmission Lines").

#### **IV. POSITIONS OF THE PARTIES**

##### **A. The Proposed Construction is Necessary To Provide Adequate, Reliable, and Efficient Service To its Customers and Is the Least-cost Means of Satisfying the Service Needs of its Customers**

###### **1. The Need For the Project**

###### **Position of Petitioners**

Petitioners testified that the Transmission Lines and the Project are necessary to provide reliable interconnection service to the Prairie State Facility. (See AmerenIP Ex. 1.0, pp. 25-26.) Petitioners point out that Staff witness Linkenback testified that the Transmission Lines are necessary to provide adequate and reliable service to the Prairie State Facility (ICC Staff Ex. 1.0, pp. 7-13), and no party has questioned the need for the Project.

Petitioners asserted that the Project is necessary through testimony detailing the comprehensive study process that determined that the Transmission Lines represent the best option for connecting the Prairie State Facility. To begin with, Petitioners' planning process (undertaken through Ameren Services Company ("AMS")) includes compliance with NERC Reliability Standards and adherence to the FERC-filed Ameren Transmission Planning Criteria and Guidelines. (AmerenIP Ex. 1.0, p. 6.) These standards and criteria are used to evaluate the reliability of the Ameren bulk electric system and to assess what network upgrades would be required to meet the needs of an interconnection customer requesting to connect generation to the Ameren transmission system and other usages of the transmission system. (*Id.*)

Petitioners testified that a number of studies were performed, both independently and jointly, by Illinois Power Company ("Illinois Power") prior to its acquisition by Ameren Corporation, AMS, and the Midwest Independent Systems Operator ("MISO") to assess the network upgrades necessary for interconnection of the Prairie State

Facility to the AmerenIP transmission system and determine the best option for connecting the Prairie State Facility. The Joint Study considered six alternative configurations and concluded that the proposed transmission configuration, as shown in AmerenIP Exhibit 1.1, would adequately accept the Prairie State Facility's power output, would provide the necessary transmission system reliability, and would be the least cost alternative among the six alternatives considered. (AmerenIP Ex. 1.0, p. 8.) This comprehensive study process produced the option that is now referred to as the Project.

Petitioners explained that in July 2001, Peabody Energy (the parent company of Prairie State) submitted a request to Illinois Power (now AmerenIP) to perform a facility study for connecting up to 1,500 MW of coal fired generation to the Illinois Power transmission system. (AmerenIP Ex. 1.0, p. 9.) The facility study performed by Illinois Power personnel, described in a report dated October 2001 (AmerenIP Exhibit 1.2), assumed a plan in which Peabody Energy sought to connect the Prairie State Facility to Illinois Power's Baldwin switchyard via two radial 345 kV lines. (*Id.*) The load flow analysis part of the facility study identified various network upgrades to accommodate the Prairie State Facility, including a Baldwin – Rush Island 345 kV line. (*Id.*) The stability analysis part of the facility study also identified a need for this line and some terminal equipment upgrades at the Baldwin switchyard. (*Id.*)

Petitioners described how six options for connecting the Prairie State Facility were explored in the Joint Study. (AmerenIP Ex. 1.0, pp. 15-16.) Plans 1 through 5 were based upon the configuration where two new 345 kV lines would directly connect the Prairie State Switchyard to the Baldwin switchyard. (*Id.*) Five alternatives were considered for an additional outlet line from the Baldwin switchyard. Plans 1 through 5 considered additional 345 kV lines ranging from 21 miles to 50 miles in length from the Baldwin switchyard to the Rush Island switchyard, Dupo Ferry substation, Stallings substation, Cahokia substation, or W. Mt. Vernon substation. (*Id.*) Plan 6 replaced the radial connection with two double circuit network supplies created by routing two existing 345 kV lines in the area, the Baldwin-Stallings and Baldwin - W. Mt. Vernon lines, into and out of the proposed Prairie State switchyard. (*Id.*)

Petitioners testified that the Joint Study was conducted in two phases. In Phase I of the Joint Study, all six plans were first evaluated by performing power flow analysis and limited stability analysis. (AmerenIP Ex. 1.0, pp. 17-18.) (*Id.*) Petitioners asserted that as the result of this analysis, the in and out connection of the Prairie State Switchyard identified as Plan 6 and a Baldwin-Rush Island 345 kV line was selected as the best overall set of network upgrades. (*Id.*) The original Plan 6 with the addition of the Baldwin-Rush Island 345 kV line was labeled as modified Plan 6 or Plan 6M. (*Id.*; AmerenIP Exhibit 1.11.)

Petitioners then testified that cost estimates were developed for all seven plans. (AmerenIP Exs. 1.0, p. 19; 1.12.) The cost estimates of the Plans 3, 4, and 5 were \$89,100,000, \$ 68,580,000, and \$113,800,000, respectively. (*Id.*) Based on these cost estimates, Petitioners testified that Plans 3, 4, and 5 were eliminated from further consideration due to higher costs compared to other plans. (AmerenIP Ex. 1.0, p. 19.) Plan 2 was later dropped because it involved a connection to proposed but uncertain

major network upgrades on the Illinois/Missouri interface, independent of the Prairie State project, and it was determined to further evaluate only Plan 1 and Plan 6M. (*Id.*)

Petitioners explained that in Phase II of the Joint Study, Plans 1 and 6M were further evaluated from the power flow, stability, and short circuit (or fault) perspective. (AmerenIP Exs. 1.0, p. 20; Ex. 1.13.) The estimated costs for all the upgrades, including cost estimates for the Prairie State Switchyard, were included in a total estimated cost for each plan. (AmerenIP Ex. 1.0, p. 20.) The total estimated cost for Plan 1 was about \$77,007,224 versus \$72,931,000 for Plan 6M. (*Id.*) Based on a comparison of the total costs of the two plans and consideration of the robustness offered by Plan 6M with the additional outlet lines, it was the consensus of all parties that Plan 6M should be the final recommended plan. (AmerenIP Ex. 1.0, p. 22.)

Petitioners also described additional power flow, short circuit, and stability studies performed by AMS for the Prairie State connection in 2005 and referred to as the "G495" Study. (AmerenIP Ex. 1.0, pp. 23-24.) The G495 study was performed in response to a request by Peabody Energy to increase the Prairie State Facility output by 150 MW from the original request of 1500 MW, to a total net output of 1650 MW. (AmerenIP Ex. 1.0, p. 24.) Due to the relatively small increase in output (150 MW), Plan 6M was selected for this study to verify whether or not it would work for the additional capacity. (*Id.*) Petitioners testified that the conclusion of the power flow study was that the increased capacity of the Prairie State Facility would not require any additional transmission upgrades. (*Id.*)

Petitioners asserted that the new Baldwin-Rush Line mitigated the thermal and stability constraints imposed by the proposed 1650 MW Prairie State Plant in Washington County, Illinois. (AmerenIP Ex. 1.0, p. 26.) While these constraints could be mitigated by implementing other alternatives, these alternatives required costlier upgrades. (*Id.*) Thus, based on the various studies performed over the last several years and the alternatives considered, the proposed Project - two in/out outlet lines and the Baldwin-Rush Line - offers the best transmission plan for the Prairie State Plant. (*Id.*)

### **Position of Staff**

Staff testified that the Petitioners' proposed project is required to comply with FERC regulations governing interconnection services provided to generators, and that the three proposed lines are necessary to provide adequate and reliable service to Prairie State. (ICC Staff Ex. 1.0, pp. 8-9.) Staff further testified that Ameren provided comprehensive evidence that it thoroughly examined how best to serve Prairie State's needs through the sequence of three studies that assessed what transmission network improvements were needed for Prairie State to connect to AmerenIP's transmission system. (*Id.*)

### **Commission Conclusion**

Based on the comprehensive evidence presented by Petitioners regarding the studies supporting the need for the Project, Staff's agreement that the Project is necessary, and the fact that no other party argued the Project was not necessary, the Commission concludes the Project is necessary to interconnect the Prairie State Facility to the AmerenIP transmission system.

## **2. Least Cost Means**

### **Position of Petitioners**

As described above, Petitioners explained that the option selected during the planning process for the connection of the Prairie State Facility (Plan 6M) was the least cost option. (AmerenIP Ex. 1.0, pp. 20-21.) Petitioners state that no other party challenged the proposed Project on the grounds that it was not the least cost option. In addition, as described below, Petitioners testified that the specific routes selected were chosen based in part on cost efficiency considerations. Therefore, Petitioners assert that they have demonstrated that the Project represents the least cost option for connecting Prairie State to the transmission system.

### **Position of Staff**

Staff testified that of the available alternatives, the project defined by Petitioners is, in Staff's opinion, the least-cost means of providing adequate, reliable, and efficient service to Prairie State and Ameren's customers. (ICC Staff Ex. 1.0, p. 27.) Staff witness Linkenback specifically testified that Plan 6M is the "least-cost means of satisfying the service needs of AmerenIP's customers." (ICC Staff Ex. 1.0, pp. 27-28.)

### **Commission Conclusion**

Based on the evidence presented by Petitioners regarding the cost of the Project, and Staff's agreement that the Project as proposed by Petitioners chosen is the least-cost option, the Commission concludes the Project as described by Petitioners is least cost.

## **3. Route of the Transmission Lines**

### **Position of Petitioners**

Petitioners testified that they analyzed alternative routes for the Prairie West Line and the Baldwin-Rush Line to determine the best route option. (AmerenIP Exs. 3.0., pp. 5-7; 6.0, p. 4; 3.2; 6.1.) (No alternate routes were considered for the Prairie South Line because the primary route impacts only one landowner, Prairie State.) As Petitioners' testimony states, the primary routes were selected because they resulted in the best balance of low impacts to private property and environmentally sensitive areas with cost efficiency considerations. (*Id.*; AmerenIP Ex. 9.0, pp. 1-7, 10-14, 17-22.)

Petitioners explained that the route analysis found that the primary Baldwin – Rush Line (Green) route is one of the least cost routes, it impacts the least amount of

agricultural land, it does not affect any registered centennial or sesquicentennial farms, and it crosses the fewest number of creeks and ponds. (AmerenIP Ex. 3.0, p. 5.) This route maintains an equal distance away from the incorporated communities of Red Bud and Ruma in Randolph County. (*Id.*) This route also avoids the Fults Hill cemetery and provides a more natural buffer to lands controlled by the State of Illinois and designated by the U.S. Department of Interior as a National Natural Landmark. (AmerenIP Ex. 6.0, p. 4.) Petitioners further explained that although the first alternate Baldwin – Rush Line (Brown) route avoids traversing through the incorporated community of Baldwin and affects the fewest number of occupied houses and buildings within 200 feet of centerline, the first alternate route is the most expensive, affects the greatest number of centennial farms, has the largest number of major creek crossings, crosses the most karst topography, has a portion of the route in close proximity to a no build zone, traverses in close proximity to Saltpeter Cave, which could pose potential environmental impacts within the cave, and has the largest portion of line within a five mile proximity to state park and conservation areas. (AmerenIP Exs. 3.0, p. 5; 6.0, p. 4.)

Petitioners testified that the second alternate Baldwin – Rush Line (Red) route also has a number of disadvantages: it affects the greatest amount of agricultural land; it crosses mid parcel through a large centennial farm; it parallels the northern portion of the incorporated community of Ruma within a quarter mile; it has similar quantities of creek and pond crossings as the first alternate; it comes in close proximity to a wetlands area, it is one of the longest in length; it crosses a Late Woodland village and burial site that was evaluated as potentially eligible for the National Register of Historic Places; and it angles across the Mississippi River increasing the crossing span by approximately 400 feet. (AmerenIP Exs. 3.0, pp. 5-6; 6.0, p. 4.) Petitioners assert that these disadvantages outweighed the advantages of this route, which were: it avoids the incorporated communities of Baldwin and Fults; it affects the least number of landowners; and it crosses or parallels the least amount of designated "flood plain" area. (*Id.*)

Petitioners described how the route analysis found that the proposed primary Prairie West Line (Green) route is one of the least cost routes, affects the fewest number of property owners, affects the fewest number of structures within 200 feet of the proposed centerline, maintains the greatest distance from the incorporated community of Marissa, crosses the least number of creeks, is the shortest in length, and maintains the greatest distance from an existing 345 kV transmission line. (AmerenIP Ex. 3.0, p. 6.) Petitioners testified that these advantages made this route superior to the first alternate Prairie West Line (Brown) route, which, although it follows an existing AmerenIP 345 kV line and it has fewer buildings or structures within 200 feet of the centerline, is also the most expensive, the longest in length, provides a limited work area during construction, and crosses through the incorporated town of Marissa. (AmerenIP Ex. 3.0, pp. 6-7.) Petitioners further testified that the disadvantages of the second alternate Prairie West Line (Red) route were also significant: this route parallels the boundary of incorporated Marissa; it affects the greatest number of buildings or structures within 200 feet of proposed centerline; and it crosses the greatest number of creeks and ponds with poor accessibility for construction and future line maintenance.

(AmerenIP Ex. 3.0, p. 7.) Petitioners stated that these disadvantages outweighed any potential advantages for this route. (*Id.*)

Petitioners asserted that, as a result of these route analyses, in each case the primary route was selected as preferred and the primary proposed (Green) routes for the Baldwin-Rush Line, the Prairie West Line, and the Prairie South Line represent the best option for providing adequate, reliable and efficient transmission service.

### **Position of Staff**

Staff witness Linkenback proposed an alternate route for the Baldwin-Rush Line that goes to the north and east of Baldwin and encircles the Village of Baldwin on three sides. (ICC Staff Ex. 1.0, pp. 19-23; AmerenIP Ex. 18.0.) Mr. Linkenback testified that the Ameren proposed route around the Village of Baldwin is much closer to existing homes than the two alternative routes, and the route he recommends is not within 300 feet of any dwelling whereas Ameren's proposed route has five homes within 300 feet of the centerline of the route. (ICC Staff Ex. 1.0, p. 19.) Mr. Linkenback asserted that it is prudent to avoid building a new transmission line near existing homes when ever possible. (*Id.*) Although Mr. Linkenback testified that he understood how the preferred route is less costly than the route he is proposing because it is shorter, and why the preferred route has less agricultural impact than the alternate route because again it is shorter and it goes through less agricultural area, he testified that, in his opinion, relocating the transmission line away from the Village of Baldwin at an additional cost of \$3.79 million is outweighed by the benefit of reducing the number of existing homes that would be located very close to the transmission line. (ICC Staff Ex. 5.0, pp. 6-7.)

Mr. Linkenback also alleged that Staff's recommended route near the Village is more consistent with AmerenIP's route selection process than Petitioners' proposed route, because the Petitioners' proposed Green route goes through the Village of Baldwin municipal limits and within 200 feet of homes while Staff's proposed route does not go through the Village of Baldwin municipal limits or within 200 feet of homes. (Staff Ex. 5.0, pp. 8, 9.) Staff asserted that the only reasons given by AmerenIP for not accepting Staff's recommended alternative route around Baldwin are (1) the increase in the cost of the Project, (2) the proximity of the alternative route to the Baldwin Water Treatment Plant, and (3) the possible future growth of Baldwin to the east in the direction of the alternative route. (Staff Init. Br., p. 7.)

Staff also asserted that Petitioners' concern with the future growth to the east of Baldwin due to the new World Shooting and Recreation Complex and the potential future expansion of the Baldwin water treatment plant is based entirely on speculation. (Staff Init. Br., p. 10.) Staff argued that there is no evidence in the record as to when or where any future development will occur in Baldwin. Staff further argued that, as to concerns about expansion of the water treatment plant, according to Baldwin's response to a Staff data request, there is room for one or possibly two cells of expansion on the existing water treatment plant on the treatment plant property. (*Id.*) Staff contends that speculative concerns about possible future development on the east

side of Baldwin and/or a need to expand the water treatment plant should not outweigh concerns about current occupied structures within the Petitioners' proposed route.

### **Position of Baldwin/Stringtown Interveners**

The Baldwin/Stringtown Interveners support the Staff Route and argue it should be adopted over the Green route. (B/S Int. Init. Br., p. 6.) A number of arguments raised by the Baldwin/Stringtown Interveners are similar to Staff's, including arguments that the Green route is too close to residences, it crosses through incorporated Baldwin, and that there is no certain development east of Baldwin. The Baldwin/Stringtown Interveners also argue that the Green route affects four centennial farms east of the Kaskaskia River. (B/S Int. Init. Br., p. 10.) Finally, the Baldwin/Stringtown Interveners argue at length about the direction of future growth in Baldwin, asserting that Baldwin has had little growth and development, what development there has been has been to the west, and the Village of Baldwin has not officially supported an eastern route versus a western one. (B/S Int. Init. Br., pp.9-10, 13-14.) As a result, the Baldwin Stringtown Interveners argue that the Staff Route represents a better choice than the Green route.

### **Other Routes Proposed by Interveners**

Intervener Merrill Prange proposed an alternative route for the Baldwin-Rush Line known as the "Black" route. (Prange Statement Pos., pp. 2-3.)

Intervener Jeffrey Guebert also proposed an alternative route, known as the "Blue" route. (Guebert Statement of Pos., pp. 1-4.)

### **Response of Petitioners**

Petitioners argued that Mr. Linkenback's proposed reroute does not represent the best or most cost-effective route for the Baldwin-Rush Line. (AmerenIP Ex. 9.0, p. 2.) Petitioners point out that Petitioners' primary "Green" route is 3.1 miles shorter than Mr. Linkenback's proposed route adjustment around the Village of Baldwin. (*Id.*, p. 3.) Petitioners also pointed out that they are obligated by Section 8-406 to demonstrate that they are implementing the least cost method of providing service, and Mr. Linkenback's route adjustment would mean approximately \$ 3-3.79 million additional dollars cost for the Project. (*Id.*)

Petitioners asserted that analysis of Mr. Linkenback's proposal shows that there are few benefits and a number of detriments from the Staff modification. (AmerenIP Ex. 14.0, p. 2.) The adjustment would impact the Project's schedule, which is customer driven, as cost and construction time would be directly related to the additional mileage. (AmerenIP Ex. 9.0, p. 3.) Further, by routing the "Green" route along the western fringes of incorporated Baldwin, instead of using Mr. Linkenback's route, Petitioners avoid encompassing Baldwin on three sides of town - north, east, and south. (AmerenIP Ex. 9.0, p. 2.) Petitioners' explained that the proposed route also recognizes that the "Green" route avoids interfering with development town of Sparta (primarily due to the new World Shooting and Recreational Complex, which is approximately 5 miles

east of Baldwin and 3 miles north of Sparta). (*Id.*) Petitioners argued that Mr. Linkenback, by contrast, is of the opinion that the World Shooting and Recreational Complex will not bring the amount of commercial business to the area that Petitioners feel it will. (*Id.*) Petitioners pointed out that this opinion conflicts with that of certain Interveners, who expect development to extend east of Baldwin to the World Shooting and Recreational Complex, and the public at large as expressed at the public informational workshop in December 2005. (See Guebert Statement of Pos., p. 2.) Petitioners also argued that Mr. Linkenback's route adjustment may also interfere with expansion of Baldwin's water treatment plant to the east. (AmerenIP Ex. 9.0, p. 3.) Petitioners contend that Mr. Linkenback did not provide evidence that future community growth, and in particular commercial growth, would not be to the east, while by contrast, Petitioners made a good faith effort to address the public concerns that it understood the residents of Baldwin to have by routing the line to the west side of town. (AmerenIP Ex. 14.0, pp. 2-3.)

Petitioners asserted that Mr. Linkenback's proposal has other disadvantages. For example, Petitioners testified, his proposed alternative requires more infrastructure, which results in a greater visual impact for the public as well as a greater impact on the landscape in general. (AmerenIP Ex. 14.0, pp. 1-2.) The line lengths for the proposed Green route versus the Staff's proposed route are 4.22 miles versus 7.38 respectively. (AmerenIP Ex. 14.0, pp. 3-4.) The affected portion of agricultural cropland and pasture for these two routes would be 61.1 acres versus 121.3 acres, respectively. (*Id.*) Environmentally, the soil erosion level in sections 28, 27, and 26 of the Staff Route are higher than along the preferred Green route. Also, Petitioners noted the Staff's re-route would affect four more land parcels than the Green route. (*Id.*) Petitioners argued that, given the high cost of Mr. Linkenback's proposal, its negative impacts, and the limited evidence of any benefit, Mr. Linkenback's proposal for re-routing the Baldwin-Rush Line should be rejected.

With regard to the arguments of the Baldwin/Stringtown Interveners, as Petitioners' witness Ms. Dencker testified, the farms that the Baldwin/Stringtown Interveners assert are centennial farms were not registered with the Department of Agriculture (Tr. 219-21) and therefore, as the Baldwin/Stringtown Interveners acknowledge (p. 10), the Petitioners could not identify the length of ownership and include the centennial farms in their route analysis. (Tr. 218.) Petitioners assert that there is no reason to expect the Green route to avoid centennial farms that were not identified. Moreover, although Petitioners seek to avoid centennial farms, there is no requirement that they do so. (Tr. 217-18.) Given the other advantages of the Green route and disadvantages of the Staff Route, Petitioners argue that the presence of four unregistered farms that the Baldwin/Stringtown Interveners allege are centennial farms is not a sufficient basis to select the Staff Route.

Petitioners explain that, as the Baldwin/Stringtown Interveners point out, the Village of Baldwin did express a preference for a route for the Transmission Lines to the north of Baldwin, suggesting opposition to the eastern routes. (B/S Int. Init. Br., p. 9; Liefer Ex. 2.0, p. 3.) Moreover, although not discussed in either the Baldwin/Stringtown Interveners' Initial Brief or testimony, Petitioners note that the Village of Baldwin also

passed a resolution at its February 21, 2006 Board of Trustees meeting opposing both the "Primary and Secondary Locations" of the Transmission Lines. (Liefer Ex. 2.0, Att. C, p. 9.) As the Baldwin/Stringtown Interveners acknowledge, the Petitioners' original preferred primary route was to the east of Baldwin. (B/S Int. Init. Br., p. 6; Tr. 225.) In addition, both Petitioners and other Interveners have testified regarding public concern with routing the line to the east of Baldwin. (Pet. Init. Br., pp. 24-26; AmerenIP Ex. 14.0, pp. 2 3; Guebert Statement of Pos., p. 2.) Therefore, the evidence shows real concern about and real opposition to a route east Baldwin.

With regard to avoiding municipalities, Petitioners contend that Baldwin's location at the outlet of the Baldwin plant makes Baldwin difficult to avoid. In fact, two of the three proposed routes cross Baldwin's incorporated boundary, and the third passes close by. (AmerenIP Ex. 18.0.) As Petitioners explained in their Initial Brief (pp. 11-12, 24-26), they considered a wide variety of factors, including the proximity of residences, the proximity of municipalities, possible interference with development east of Baldwin, and agricultural and environmental impacts in selecting the Green route. In focusing on development patterns, Petitioners assert that the Baldwin/Stringtown Interveners (like Staff) ignore many of these other factors, such as agricultural and environmental impacts. Petitioners argue that given the high cost of the Staff Route, its negative impacts, and the limited evidence of any benefit, the Staff Route for the Baldwin-Rush Line should be rejected.

With regard to the Prange Black route, Petitioners argued that while Mr. Prange states he understands that the "put it in his yard, not in mine" argument solves nothing and accomplishes less, Mr. Prange is a resident of Fults and his proposed alignment is completely removed from the proximity of the town. (AmerenIP Ex. 9.0, p. 13.) Petitioners also pointed out that Mr. Prange has chosen to examine his proposed transmission line's proximity to homes using one eighth and one quarter mile measurements, but Petitioners cannot reproduce Mr. Prange's results, which Petitioners contend is due, at least in part, to his inaccurate representations of Petitioners' route alignments. (*Id.*) Therefore, Petitioners questioned whether the Black route really would be in proximity to fewer residences. (*Id.*) Petitioners also noted that Staff could not corroborate Mr. Prange's information. (ICC Staff Ex. 1.0, pp. 25-26.)

Petitioners also pointed out that several Interveners whose property would be affected by the Black route, including Interveners Richard and Eugene Stadter, Martha Church, Margarete Schrader, Thomas and Annette Steibel and Anthony and Rachel Steibel, have expressed opposition to the route, often for many of the same reasons as other Interveners have expressed opposition to the preferred "Green" route or other route options. (AmerenIP Ex. 9.0, pp. 13-14.) Thus, Petitioners argue that selecting the Black route would not eliminate the types of concerns expressed by various Interveners, but simply transfer those concerns from one set of Interveners to another. (*Id.*)

With regard to the Blue route, Petitioners state that the Blue route does not alleviate the concerns of the Village of Baldwin, as the proposed route crosses through the incorporated area of their community. (AmerenIP Ex. 9.0, p. 20.) Petitioners also assert that the route also has a number of other disadvantages from an engineering

perspective and for these reasons, this route is not a preferred route, and there is no basis for selecting the Blue route over Petitioners' preferred Green route (or any other route option) for the Baldwin-Rush Line.

### **Commission Conclusion**

The Commission is mindful of the need for the Transmission Lines to avoid proximity to residences where possible. However, the Commission also notes that Petitioners had to balance many competing factors in selecting a preferred route for the Transmission Lines. Moreover, Petitioners have a statutory obligation to demonstrate that the Transmission Lines represent the least-cost option for serving their customers. With regard to the Baldwin-Rush Line, the Commission concludes that the primary reason for Staff's and the Baldwin/Stringtown Interveners' opposition to the Green route from the Baldwin Plant to the Kaskasia River is its proximity to residences. However, the alternate Staff Route will add \$3.79 million to the Project cost. Moreover, Petitioners have shown that there are a number of other detriments to the Staff Route. Therefore, the Commission concludes that the benefits of the Staff Route do not outweigh the costs, and rejects the Staff Route in favor of maintaining Petitioners' preferred Green route.

### **B. The Utility Is Capable of Efficiently Managing and Supervising the Construction Process and Has Taken Sufficient Action to Ensure Adequate and Efficient Construction and Supervision Thereof**

#### **Position of Petitioners**

Petitioners explained that they are capable of efficiently managing and supervising construction of the proposed lines. (Pet. Init. Br., pp. 14-15.) The JOA provides that AmerenIP and Ameren Transco will have full management control of the construction of the Project, and therefore will be able to ensure that the Project will be constructed in accordance with all applicable federal and state regulations and orders of the Commission, including 83 Ill. Admin. Code Part 305, and the National Electrical Safety Code.

#### **Petition of Staff**

Staff testified that based on the information provided by Petitioners and the knowledge that Ameren is currently constructing a 55-mile long 345kV line in Missouri, Petitioners capable of managing and supervising the construction of the lines associated with this project. Therefore, Staff agreed that Petitioners are currently capable efficiently managing and supervising the Project's construction. (ICC Staff Ex. 1.0, p. 29.)

#### **Position of IBEW**

IBEW initially expressed concerns about the qualifications of the personnel who would ultimately undertake the construction of the Transmission Lines. (IBEW Ex. 2.0., p. 2.) Subsequently, IBEW agreed that, "by committing to use personnel-whether in-

house or contractor personnel-who actually possess the training and qualifications to comply with the standards of the National Electrical Safety Code when constructing and maintaining the proposed transmission lines and related facilities" (*id.*, p. 6), Petitioners meet the requirements of Section 8-406(b) with regard to management of construction of the lines. (*Id.*, pp. 2-7.) IBEW stated that the use of these personnel ensures that the proposed transmission lines and related facilities will be constructed and maintained in a manner that safeguards system reliability and the safety of the public and utility personnel. As a result, IBEW testified that the Commission has a sufficient basis to approve the Amended Petition, and therefore IBEW does not oppose Ameren's Amended Petition. (*Id.*, p. 6.)

In its Initial Brief, however, IBEW argued that although the record evidence shows that Ameren is capable of efficiently managing and supervising the construction of the proposed transmission lines and facilities (IBEW Init. Br., p. 2), it is the IBEW's position that Petitioners can only demonstrate that they have taken sufficient action to ensure adequate and efficient construction of the project if they actually use one of the current alliance contractors. (*Id.*) (IBEW noted that Ameren currently has six alliance contractors and it is undisputed, based on the record, that each of these current contractors employ personnel who are qualified and trained to construct and maintain the project in compliance with Code Part 305 of the Commission's Rules.) IBEW argues, however, that Ameren has not committed to use its current alliance contractors to actually construct (or maintain) the proposed project, and Ameren could use a contractor that is not presently one of its alliance contractors. (*Id.*, p. 3.) IBEW claims that therefore Petitioners cannot demonstrate that they can ensure the adequate and efficient construction of the Project. (*Id.*) As a result, the IBEW requests that the Commission specifically find that its approval of Ameren's project is contingent upon Ameren using one or more of its current alliance contractors to actually construct and maintain the project.

### **Response of Petitioners**

Petitioners first pointed out that IBEW, in testimony, initially agreed that Petitioners meet the requirements of Section 8-406(b) with regard to management of construction of the lines, but now have changed their position. (Pet. Reply Br., pp. 9-10). Petitioners also pointed out that Staff, relying on Petitioners' evidence, correctly concluded that Petitioners are capable of managing and supervising the construction of the lines associated with the Project under Section 8-406(b)(2). (*Id.*)

Petitioners argue that the IBEW's position is more about preserving IBEW jobs than anything else, and is not about the public interest. (Pet. Reply Br., pp. 9-10.) Faced with no guarantee that future alliance contractors may not use union employees—a matter of speculation on the IBEW's part—IBEW adopts a farfetched interpretation of Section 8-406(b)(2) that the Commission has the authority to insist the utility use these contractors in perpetuity. Petitioners contend that the Commission has no such authority and cannot dictate to the utility who to hire, who to fire, how or when employees are transferred, and so forth except in the most limited circumstances when required by statute. (*Id.*) As an example, Petitioners point to recently enacted Section

16-107(b-15), which requires Commission approval of a Program Administrator to administer the utility's real time price program for residential customers. (*Id.*)

Petitioners also argue that are not aware of any Commission decision that support the IBEW's legal interpretation. (Pet. Reply Br., p. 10.) Petitioners note that, in its recent order approving AmerenIP's construction, operation, and maintenance of a new 138 kV line in Champaign County, the Commission, in finding the utility met the requirements of Section 8-402(b), did not compel the utility to use contractors already in place. *Illinois Power Company d/b/a AmerenIP*, Docket 06-0083, Final Order (June 26, 2006).

Petitioners further argue that IBEW assumes that Petitioners will retain the current alliance contractors in perpetuity, and that this makes no sense if, for example, the alliance contractors of today go out of business, perform poorly, or no longer adhere to changing technological and building construction practices. (Pet. Reply Br., p. 11.) Petitioners argue that IBEW argument fails to understand that Petitioners do intend to use contractors in the future that possess the same high level qualifications and abilities of the alliance contractors in place today. (*Id.*) Petitioners point to the testimony of Ms. Dencker, who stated that whoever Petitioners employ to build the Prairie State facility or any other transmission projects would be ". . . fully qualified to perform the construction and maintenance of transmission lines". (AmerenIP Ex. 9.0, p. 9.) Petitioners contend that Ameren's sound history in employing appropriate personnel to build and maintain transmission lines, as well as the commitment to employ comparable contractors, that forms a basis in the record for the Commission to conclude that Petitioners have taken sufficient action to ensure there will be adequate and efficient construction supervision of the Prairie State facility. Therefore, Petitioners argue, there is no reason to adopt IBEW's proposed condition.

### **Commission Conclusion**

The Commission concludes that Petitioners have shown (and Staff has agreed), that Petitioners are capable of efficiently managing and supervising the construction of the Project and have taken sufficient action to ensure adequate and efficient construction. With regard to IBEW's proposed condition, the Commission concludes that it would be inappropriate to restrict Petitioners to using their current alliance contractors to construct the Transmission Lines, and that IBEW has not demonstrated that Petitioners use of other personnel besides existing alliance contractors to build the Transmission Lines would result in inadequate or inefficient construction. Therefore, IBEW's proposed condition is rejected.

### **C. Utility Is Capable of Financing the Proposed Construction Without Significant Adverse Financial Consequences for Utility or its Customers**

#### **Position of Petitioners**

Under Section 8-406 of the Act, a utility must demonstrate that the project it intends to undertake will not have "significant adverse financial consequences for the

utility or its customers." 220 ILCS 5/8-406(b)(3). In this case, Petitioners testified that it was concerned that if it undertook the Project on its own, it would face a serious risk of a credit ratings downgrade, which in turn could cause serious operational difficulties. Rather than take such a risk, Petitioners proposed to undertake the Project with a newly-formed affiliate, Ameren Transco. Under Petitioners' proposal, AmerenIP would own 10% of the Project and Ameren Transco would own 90%. Petitioners asserted that this division of ownership would allow the Project to be built, bringing much needed generation on-line, without raising any meaningful prospect of adverse financial consequences to AmerenIP or its customers.

Petitioners argued that is in the best interests of all that the generating station be completed and brought on line, and that the Commission is well aware of the need of Illinois electric utilities to purchase generation, since in the main they do not own generation capacity and rely on the wholesale market for their power supply.

Mr. Lee Nickloy explained that AmerenIP cannot meet the statutory test of Section 8-406 of the Act, 220 ILCS 5/8-406, which requires a finding that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. (AmerenIP Ex. 4.0, p. 4.) Mr. Nickloy further explained that this is so because AmerenIP will receive no incremental cash flows by which to cover or offset the debt incurred for construction of the Project, among other cash flow challenges. (*Id.*) The absence of incremental cash flows has the effect of negatively pressuring key financial measures which are important for the rating agencies' quantitative analyses of AmerenIP's financial condition and the assignment of credit ratings. (*Id.*) Further, the recent downgrade of AmerenIP's credit ratings means it has less capacity to absorb additional debt before its ratings could be downgraded below investment grade. (*Id.*)

Petitioners noted that the next ratings downgrade at AmerenIP would result in the company receiving a sub-investment grade (or "junk") rating. Mr. Nickloy pointed out that a downgrade of AmerenIP's credit ratings to sub-investment grade would be both a significant and an adverse impact on AmerenIP. (Ameren Ex. 4.0. p.4; Tr. 180-81.) Such ratings would trigger significant collateral requirements from suppliers of critical commodities such as natural gas and power. Mr. Nickloy also explained that sub-investment grade ratings would also severely limit AmerenIP's ability to finance deferred purchased power costs as part of any plan to phase-in higher electric power costs for its customers as AmerenIP has proposed (AmerenIP Ex. 11.0, pp. 6-7), and the Commission has approved.

Petitioners contended that the results of a downgrade of AmerenIP's credit ratings could include, but would not necessarily be limited to, higher borrowing and financing costs, more restrictive debt covenants, limited and/or restricted access to capital, and suppliers of power and natural gas requiring credit enhancement/collateral in the form of cash deposits/margin and letters of credit. (AmerenIP Ex. 4.0, pp. 4-5; Tr. 182.) All of these events could have significant adverse financial consequences to both AmerenIP and its customers.

Indeed, Petitioners noted that Mr. Hardas admitted that a downgrade to sub-investment grade could cause a cash crisis at a utility. (Tr. 182-83.) Petitioners stated that a cash crisis could lead to a utility ultimately being unable to pay for the electricity or gas that its customers require, which could lead to service interruptions that, as Staff readily acknowledged, would not be "desirable." (Tr. 184.)

Petitioners explained that the pressure on AmerenIP's credit ratings from the Project arises from the treatment of construction advances. These advances are reflected as loans, i.e., debt, on the balance sheet of the legal entity receiving such advance, and these advances accrue interest. (AmerenIP Ex. 4.0, p. 6.) There is no cash flow associated with the project until it goes into service, however, so the utility's books reflect increased debt with an interest cost, but no associated cash flow. (*Id.*, pp. 6-7.)

With regard to financial consequences for Ameren Transco, Petitioners point out that Staff admits that it did not consider what the consequences of Ameren Transco's participation might be. (Tr. 195-96.) Petitioners argue that there are several reasons why Ameren Transco would experience no adverse consequences. First, it has no customers during the construction phase. (AmerenIP Ex. 4.0, p. 7.) Unlike AmerenIP, it is not buying electricity or gas for resale to its other customers. It is not obligated under supply contracts that could give rise to collateral calls. It is not trying to finance a deferred payment plan approved by the Commission to phase in a rate increase. (AmerenIP Ex. 11.0, pp. 6-7.) . Petitioners explained that Ameren Transco would be a special purpose entity formed to construct a portion of the Project, and, during the construction phase of the Project, this entity would not have any customers. (AmerenIP Ex. 4.0, p. 7.) Currently, it has no other service obligations; it provides no other service but to construct the Project; it has no current need to make or fund other capital expenditures to maintain other assets. (*Id.*) In addition, during the construction phase, none of the entity's debt repayment or interest obligations related to the Project would become due and payable. (*Id.*) This would be different if Ameren Transco had other outstanding securities and/or was rated, but it will not. In other words, Petitioners asserted there could not any adverse consequences to Ameren Transco resulting from the high degree of debt it will hold. The entity doesn't have any other borrowing needs, its funding is provided in advance by Prairie State, and there are no other external investors. Thus, Petitioners argued there is no basis to conclude that Ameren Transco would experience significant adverse financial consequences.

### **Position of Staff**

Staff testified that the estimated cost of the proposed construction under the primary or the alternative route is small in comparison to AmerenIP's total utility plant and revenue for electric operations. Additionally, the effects on AmerenIP's financial ratios are minimal. (ICC Staff Ex. 2.0, p. 4.) The financial ratios provided by AmerenIP are consistent with S&P credit ratings of A and BBB. AmerenIP's calculations demonstrate small declines in its financial ratios. Even with those small declines, AmerenIP's ratios remain in the A and BBB range for the funds from operations to total debt ratio and funds from operations interest coverage ratio. Therefore, Staff claimed

that it is reasonable to conclude that AmerenIP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. (*Id.*, p. 5.) Mr. Hardas explained that his analysis considered the repayment structure of the advance from Prairie State and the effect of the debt on AmerenIP's cash flow ratios even if one treated the Prairie State advances like conventional debt. In contrast, Staff asserted that Mr. Nickloy's position is that an increase in debt obligation without offsetting cash flow will result in degradation of key rating measures. Staff pointed out that, under the terms of the indebtedness to Prairie State, repayment will be in the form of credits and is deferred until the Project goes into service. In other words, AmerenIP will incur no incremental cash outflow during the construction period. Once the Project goes into service, the indebtedness to Prairie State will have a dedicated cash flow stream for repayment. (ICC Staff Ex. 6.0, p. 2.) AmerenIP's calculations demonstrate that the project debt would result in small declines in its financial ratios. Mr. Hardas asserted that even with those small declines, AmerenIP's ratios remain in the same range for the funds from operations ("FFO") interest coverage ratio and funds from operations to total debt ratio. In my judgment, since this project would not draw any cash flow away from AmerenIP's other utility operations, it is reasonable to conclude that AmerenIP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. (*Id.*, p. 4.)

### **Response of Petitioners**

Petitioners asserted that the Staff never considered the importance of completing the generating project to Illinois consumers. (Pet. Init. Br., p. 16.) Petitioners point out that Staff witness Hardas admitted that he did not take the desirability of adding new generation facilities into account in any respect in developing his analysis, and he was not aware of any position taken by the Staff on this issue. (Tr. 179). Petitioners believe that this illuminates a fundamental difference between the Petitioners' approach and that of the Staff: because of the importance of the generation addition, AmerenIP does not wish to assume any meaningful risk that the Project not be completed, whereas the Staff is willing to gamble that things will turn out all right, and assume some level of risk that they do not. (Pet. Init. Br., p. 16.)

Petitioners argued that Staff's view of the possible effect of the Project is based entirely on its assessment of the "metrics" associated with Standard & Poors' ("S&P") credit ratings. Petitioners testified that Mr. Hardas conducted an analysis using S&P's ratio guidelines (which ignores AmerenIP's current financial condition and ratings) and by implying – but not directly asserting – that ratings agencies will treat the debt associated with the Project differently from "conventional" debt. Thus, he concluded that AmerenIP's credit ratings will not be affected by financing all of the Project costs. (Pet. Init. Br., p. 19.)

Mr. Nickloy explained that there are at least three reasons why Staff's analysis is off-base. (Ameren Ex. 11.0, p. 3.) First, his analysis presumes that AmerenIP is starting from a position of credit strength. To the contrary, AmerenIP's prospective financial condition and credit ratings have been severely weakened over the last several

months. Its credit ratings are currently barely investment grade. Moody's currently rates AmerenIP's senior secured debt Baa2 and has assigned an issuer rating of Baa3 (their lowest investment grade rating). S&P currently rates AmerenIP's senior secured debt BBB- (their lowest investment grade rating) and the Company's issuer rating from S&P is also BBB-. AmerenIP's ratings from Moody's are under review for possible downgrade and its ratings from S&P are under negative credit watch – both indicating a very real threat of further ratings downgrades in the near term. (*Id.*) AmerenIP's status as an investment grade rated utility is in dire peril. Any further weakening of its financial condition could produce a sub-investment grade rating. (*Id.*)

Second, Mr. Nickloy explained, by definition AmerenIP's key financial metrics would be harmed by the incremental capital expenditures and debt (without offsetting incremental cash flow) associated with AmerenIP's financing and construction of 100% of the Project. (Ameren. Ex. 11.0, p. 4.) Although Mr. Hardas may argue that he does not believe such degradation would cause a ratings downgrade, his analysis is based solely on the use of S&P's ratio guidelines. (*Id.*) These guidelines are not helpful or instructive in attempting to presuppose any ratings result, or lack of a result, at Moody's. Also, S&P's ratings approach considers "Ameren" as a consolidated whole and does not focus specifically on individual legal entities as is the case with Moody's. (*Id.*)

Third, Mr. Nickloy testified that there is no reason to believe that any ratings agency would treat the debt associated with the Project any differently from so-called "conventional debt." (AmerenIP Ex. 11.0, pp. 4-5.) Petitioners point out that Mr. Hardas cites no statement of any ratings agency, nor provides any example of any instance in which any such distinction was made. (*Id.*) Indeed, the debt that accrues to fund Project expenditures bears interest as stipulated by FERC. Petitioners noted the distinction of risk differential between/among different forms of indebtedness from the perspective of the issuer/obligor versus that of the investor/lender. (*Id.*) Even if it were true that there were differences in risk between the indebtedness related to the funding of the Project expenditures and AmerenIP's other debt, the rating agencies will consider the Company's total amount of debt from the lender's perspective. (*Id.*) Petitioners contend there is no distinction between FERC-mandated debt and any other. For that matter, it could be argued that there are differences in risk between AmerenIP's senior secured debt, its loan obligations related to its pollution control indebtedness and its transitional funding notes. (*Id.*) Petitioners assert that this doesn't change the fact that in each instance AmerenIP has a future repayment liability associated with this debt and that these are liabilities which are accounted for as debt and are thus considered as debt in the ratings agencies' assessment of the credit quality of AmerenIP. (*Id.*) The funding for the Project expenditures will be accounted for in a similar manner and reflected on AmerenIP's balance sheet along with along with all of its other debt. In the case of both this and AmerenIP's other indebtedness, these are funds provided to finance AmerenIP's assets whether completed or under construction. If AmerenIP weren't receiving advances/debt from Prairie State to fund the Project costs, it would incur debt from some other source to do so. (*Id.*)

Petitioners argue that Staff simply cannot validly conclude that the credit ratings of AmerenIP would not be lowered as a result of financing 100% of the Project cost, and

thus cannot conclude nor guarantee that significant adverse financial consequences would not result. (AmerenIP Ex. 11.0, pp. 5-6.) Petitioners further argue that Staff cannot change the fact that adding debt without offsetting that debt with incremental cash flow will result in degradation of key ratings measures, and Staff cannot guarantee any ratings outcome. (*Id.*) Petitioners point out that the fact that AmerenIP's ratings are already under review for possible downgrade and negative credit watch tells us that the answer to this is likely "not much." (*Id.*)

Petitioners contend that the effect of the Staff's proposal is to put AmerenIP and its customers at significant risk of adverse financial consequences in order to avoid the use of Ameren Transco as a financing vehicle, which, by contrast, would hold no meaningful risk of adverse consequences for AmerenIP or its customers. Petitioners argue that there are only benefits of using Ameren Transco, both in terms of enhancing the ability of AmerenIP to maintain its credit ratings and to avoid higher borrowing costs (or worse) which could result from further decline of its ratings.

Petitioners point to a final reason to approve the Petitioners' proposal. Ameren issued \$1.3 billion of common equity for the purpose of acquiring and recapitalizing Illinois Power Company. (AmerenIP Ex. 11.0, pp. 6-7.) The result of this was a restoration of the financial health of AmerenIP, restoring it to investment grade status and providing it access to adequate working capital and long-term sources of capital. Petitioners state that the maintenance of AmerenIP's investment grade ratings has been a high priority for Ameren. (*Id.*) Petitioners explained that as a result of ratings downgrades at AmerenIP and negative pressure on AmerenIP's key financial measures, Ameren has undertaken actions to prevent AmerenIP's ratings from slipping back into sub-investment grade. The proposal to form Ameren Transco to alleviate financial harm at AmerenIP (yet allow for completion of the Project) is yet another example of Ameren's efforts to ensure the financial viability of AmerenIP but also support the Project. (*Id.*)

With regard to Ameren Transco's ability to fund 90% of the Project, Petitioners dispute Staff's argument that Petitioners have failed to meet their burden of proof with regard to demonstrating that Ameren Transco can finance 90% of the Project without adverse consequences to Ameren Transco. (Staff Init. Br., p. 14.) Mr. Nickloy explained why there would not be any adverse consequences to Ameren Transco resulting from its participation in the Project. (AmerenIP Ex. 4.0, pp. 7-8.) Petitioners point out that Staff witness Hardas claimed that Ameren Transco did not have a greater ability than AmerenIP to meet the requirements in Section 8-406(b)(3) of the Act (ICC Staff Ex. 2.0, p. 7), but did not analyze the consequences to Ameren Transco of financing 90% of the Project as Petitioners proposed. Petitioners further point that, in fact, Mr. Hardas admitted that he did not predict any financial consequences for Ameren Transco. (Tr. 196.) Staff merely assumes that they would be the same. Petitioners demonstrated, however, that they cannot be the same because Ameren Transco does not buy electricity or gas for its customers, as AmerenIP does. Thus, Petitioners argue that Staff has no basis to assert that Ameren Transco cannot meet the standard of Section 8-406(b) with respect to its ability to finance 90% of the Project without adverse financial consequences.

## **Commission Conclusion**

The Commission finds that, based on the evidence presented by Petitioners regarding AmerenIP's current credit rating and the potential decline in credit metrics as a result of AmerenIP's financing 100% of the Project, there is a real risk of adverse financial consequences to AmerenIP if it funds 100% of the Project. The Commission notes that Staff agrees that AmerenIP's credit metrics will decline. The Commission concludes that given the risk of adverse financial consequences to AmerenIP, AmerenIP cannot meet the statutory requirements of Section 8-406(b)(3) of the Act if it finances 100% of the Project. The Commission also finds that the proposal whereby Ameren Transco will fund 90% of the Project during the construction phase is reasonable and necessary, particularly because AmerenIP's financial metrics will improve once the Project is in service and there is cashflow to support the debt from the Project funding advances carried on AmerenIP's books, and because under the JOA AmerenIP will have the right to purchase the Project from Ameren Transco. Therefore, the Commission concludes that, in order to meet the statutory requirements of Section 8-406(b)(3), Petitioners' proposal to have Ameren Transco fund 90% of the Project and AmerenIP fund 10% should be approved.

### **D. Certificate of Public Convenience and Necessity for Ameren Transco**

#### **Position of Petitioners**

Ameren Transco requests a Certificate to operate as a public utility pursuant to Section 8-406(a) of the Act. Petitioners assert that Ameren Transco's participation in the Project is necessary to prevent the construction of the Project from having adverse financial consequences for AmerenIP. Therefore, it is appropriate for Ameren Transco to be certified as a public utility. Petitioners' arguments regarding the financial necessity of Ameren Transco's participation are set forth above.

#### **Position of Staff**

Mr. Rearden recommended that the Commission deny Ameren Transco a Certificate to operate the transmission lines that are constructed as a result of Docket No. 06-0179. Instead, a Certificate should be granted to AmerenIP to operate the lines. Mr. Rearden asserted that his basis for this conclusion was Staff's belief that AmerenIP's financial status is unlikely to be significantly adversely impacted by the transmission line construction. Mr. Rearden also argued that an incremental utility carries risks that do have the potential to harm ratepayers, and with few or no benefits for ratepayers and a real risk for harm, granting a certificate to Ameren Transco is not in the public interest. (ICC Staff Ex. 4.0, p. 7.)

Staff asserts that there will be higher costs from assigning the Project to an affiliate, and as a result, Staff witness, Dr. Rearden concluded that the net social benefit was lower when Ameren Transco rather than AmerenIP finances the Project. (Staff Init. Br., p. 16.) Staff also expressed concern that there were no benefits to the ratepayers from the creation of Ameren Transco. Mr. Rearden alleged two sources of social costs

connected with the creation of another, affiliated, public utility. Dr. Rearden claimed that an additional affiliate would: (1) increase the resources necessary to monitor the affiliate's activities; and (2) increase the potential for affiliate abuse. (Staff Ex. 4.0, p. 5.)

Staff contended that the record reveals that Commission staffing has dropped substantially, from 353 in fiscal year 2003 to 270 currently. (Staff Ex. 7.0, p. 2.) Staff also stated that any argument about the cost to monitor Ameren Transco is purely speculative. Finally, although Staff believes the additional reporting that the Petitioners have agreed to is an improvement, these does not eliminate Dr. Rearden's concerns. (Staff Init. Br., p. 17.)

As to the potential for affiliate abuse, Dr. Rearden opined that there is a risk to ratepayers arising out of the potential for affiliate transactions that benefit shareholders at the expense of ratepayers. (Staff Init. Br., p. 18.) Although Dr. Rearden recognized Ameren Transco's commitment to financial reporting, he stated that such reporting does not eliminate the incentives for affiliate abuse. (*Id.*) He also asserted that the JOA dictates how to properly allocate costs and expenses, but does not eliminate the incentive to engage in affiliate transactions that benefit shareholders at ratepayer expense. (Staff Ex. 7.0, pp. 3-4.) Staff therefore argues that creating the new utility would increase the risk that imprudent cost levels might be recovered by ratepayers and there is no offsetting benefit. (Staff Init. Br., p. 18.)

### **Response of Petitioners**

Petitioners argue that Mr. Rearden identifies only two sources of social cost: an increase in resources expended to monitor Ameren Transco's activities, and affiliate abuse. (ICC Staff Ex. 4.0, p. 5.) Petitioners further argue that Mr. Rearden presents no evidence that either of these "social costs" actually exist, or would in fact result from the certification of Ameren Transco, and his arguments are entirely speculative.

Petitioners point out that the Commission's resource requirements have varied over time irrespective of the "current regulatory framework and the regulated utilities organizational structures." (AmerenIP Ex. 12.0, p. 4.) For example, in 2005 Union Electric Company d/b/a AmerenUE ceased being a regulated utility in Illinois and is no longer regulated by the Commission. (*Id.*) As a consequence, the regulatory filings and reports that were made by AmerenUE have effectively ceased and Commission resources are no longer required to regulate AmerenUE. (*Id.*) Nevertheless, there is no indication that the Commission has eliminated any employees because of this occurrence. (*Id.*) In fact, Petitioners' witness Mr. Gary Weiss testified that he and his staff continue to deal with basically the same number of Commission employees that they have for the past several years. (*Id.*)

Petitioners further assert that a change in manpower does not relate to an increase in regulatory burden. (AmerenIP Ex. 17.0, p. 2.) Efficiencies in operations and improved technologies can result in being able to accomplish more with less manpower. (*Id.*) For example, based on approved budget appropriations, Petitioners also point out that the additional cost per Commission employee has risen from \$71,817 in 2003 to

\$88,744 in 2006, suggesting there are more dollars spent per employee which may be attributable to efficient changes in operations and added technologies. (*Id.*)

Petitioners also explain that Ameren's Illinois utilities have sought to reduce their regulatory impact by adopting common business practices, including their rates, terms and conditions of service, in a move to "uniformity" (something the Commission has encouraged). (AmerenIP Ex. 12.0, pp. 4-5.) One of the consequences of moving to uniform tariffs is to ease regulatory oversight. (*Id.*) Instead of three separate and different rate schedules for the Commission and its Staff to oversee and regulate, there are now common basic generation service and delivery service rates among the Ameren Illinois utilities. (*Id.*)

Petitioners assert that the nature and extent of the Commission's regulation of Ameren Transco will be much less than that of AmerenIP or the other Ameren Illinois utilities. (AmerenIP Ex. 12.0, pp. 5-6.) Ameren Transco will not serve retail customers in the State of Illinois. (*Id.*) Ameren Transco will not have any rate schedules. (*Id.*) Ameren Transco will not be making rate filings, which are time consuming for both utilities and Staff (a fact which Mr. Rearden does not appear to disagree with). (AmerenIP Exs. 12.0, pp. 5-6; 17.0, pp. 2-3.) In addition, because Ameren Transco will not have any rate schedules and will not be providing service to retail customers, there will be no opportunity for complaint cases. (AmerenIP Ex. 12.0, pp. 5-6.) In short, Petitioners argue that the extent of the Commission's regulation of Ameren Transco is likely to be much less than other Illinois public utilities. (*Id.*) Thus, there is no basis to conclude that Ameren Transco will demand an increase in Commission resources.

Moreover, Petitioners point out that Ameren Transco has agreed to requests from Staff that should ease whatever minimal regulatory burden it causes. Ameren Transco has agreed to submit annual financial information required by ILCC Form 21 and Section 5-109 of the Act. (AmerenIP Ex. 12.0, p. 6.) Petitioners have also agreed to provide, as described below, a report to the Commission on an annual basis that describes the services and charges provided under the JOA. (*Id.*) Moreover, Petitioners have agreed that Ameren Transco will maintain its accounting records according to the Uniform System of Accounts for Electric Utilities, 18 CFR Part 101 as revised in FERC Order 668, until such time the ICC updates 83 Ill. Adm. Code 415. (AmerenIP Ex. 12.0, p. 7.)

Petitioners also argue that Mr. Rearden's arguments regarding potential affiliate abuse by Ameren Transco are without merit. Petitioners point out that this argument ignores the fact that Ameren Transco will be a regulated utility, subject to the same Commission regulation as AmerenIP. (AmerenIP Ex. 12.0, pp. 7-8.) Petitioners argue that there are numerous provisions in the Public Utility Act that govern transactions between the utility and its affiliates and protect against affiliate abuse. Given that a utility's affiliated interest transactions are closely supervised by the Commission and Commission approval is required with regard to many such affiliate transactions, the existence of Ameren Transco does not create an opportunity for the utility to unfairly recover the affiliate's so-called high costs through regulated rates. (*Id.*) Petitioners further argue that Mr. Rearden completely ignores the existence of the JOA, which will

control and dictate the recovery of costs and expenses associated with this the Project. (*Id.*)

Petitioners point out that Mr. Rearden agrees that the additional reporting under the JOA, described above, is an improvement in terms of ensuring against cross subsidies. (ICC Staff Ex. 7.0, p. 3.) Petitioners also point out that Mr. Rearden admits the Public Utility Act provides the Commission with the ability to remedy imprudent behavior. (*Id.*) Petitioners argue that, taking Mr. Rearden's position to its logical extreme, this threat of affiliate abuse would require the Commission to reject all affiliate transactions. However, Petitioners assert that Mr. Rearden offers no specifics as to why affiliate abuse is any more likely to happen between Ameren Transco and its affiliates than any other public utility and its affiliates, and therefore, his rationales for opposing a Certificate for Ameren Transco must be rejected.

### **Commission Conclusion**

As stated above, the Commission has concluded that Ameren Transco's participation in the Project as necessary. It appears that Staff's main opposition to Ameren Transco's Certificate was based on Staff's contention that AmerenIP could fund 100% of the Project itself. Staff's public policy arguments for rejecting a Certificate to Ameren Transco are speculative. Petitioners have shown that Ameren Transco will not create a substantial regulatory burden, and Staff has not offered any evidence that a Certification for Ameren Transco will result in a greater regulatory burden on the Commission. In addition, with respect to the argument about affiliate abuse, the Act and Commission rules have numerous provisions that are designed to protect against affiliate abuse. Staff has not shown that Ameren Transco presents any meaningful, incremental risk of affiliate abuse. For these reasons, the Commission concludes that Ameren Transco should be granted a Certificate.

## **E. The Joint Operating Agreement**

### **Position of Petitioners**

Petitioners explained that in order to allow AmerenIP and Ameren Transco to jointly own the Project during construction and operation, Petitioners entered into the JOA on April 6, 2006, which sets forth the terms of their joint ownership and operation of the Project. (See Am. Pet., p. 14; Am. Pet. AmerenIP Ex. C.) No party has contested the reasonableness of the JOA.

Petitioners stated that two key sections of the JOA require note. Section 7.1 of the JOA allows two different types of transfer of Ownership Interests: (i) a transfer by an Owner of all or part of its Ownership Interest to any person, and (ii) a transfer of an Owner's Ownership Interest in whole or in part to any other Owner at book value. Petitioners further explained that the JOA provides that AmerenIP, as an Owner, may purchase Ameren Transco's Ownership Interest in the Project at any time for a purchase price equal to book value. Moreover, Petitioners pointed out that pursuant to Section 3.1 of the JOA, AmerenIP and Ameren Transco will appoint an "Operator" to

manage and supervise construction of the Project during the period of joint ownership. As indicated in the JOA, AmerenIP and Ameren Transco intend to appoint AMS Company as said Operator. AmerenIP and Ameren Transco also intend that the Operator will be responsible for operation of the Project pursuant to Section 5.1 of the JOA.

### **Position of Staff**

Neither Staff nor any other party expressed any opposition to the JOA itself. Staff witness Hathhorn recommended, as a condition of approval, that the Commission order the Companies to provide a report to the Chief Clerk of the Commission and to the Manager of the Accounting Department of the Commission, on an annual basis, beginning March 31, 2007, for the prior calendar year, containing a description of services and charges provided by the Companies to their affiliates under the JOA; a description of services and charges provided by the affiliates to the Companies under the JOA; the Companies' monthly billing to and payments received from their affiliates under the JOA; the amounts of any allocated costs under the JOA; and supporting documentation for each allocation. (ICC Staff AmerenIP Ex. 3.0, p. 4.) Petitioners accepted these recommendations. (*Id.*)

### **Commission Conclusion**

Petitioners have demonstrated that participation of Ameren Transco is necessary for completion of the Project and that the terms of the JOA are reasonable. Neither Staff nor any other party opposed approval of the JOA. Therefore, the JOA is in the public interest and should be approved.

## **F. Section 8-503 Order**

### **Position of Petitioners**

Section 8-503 of the Act provides that whenever the Commission finds that additions to existing plant are necessary and ought reasonably to be made, or that a new structure or structures ought to be erected, the Commission "shall make and serve an order authorizing or directing that such additions . . . be made, or structure or structures be erected . . . ." 220 ILCS 5/8-503. Petitioners have demonstrated that construction of the Project is necessary.

### **Position of Staff**

Staff recommended granting Petitioners the eminent domain authority (through a Section 8-503 Order) that it is requesting in its Petition. (ICC Staff Ex. 1.0, pp. 29-31.)

### **Commission Conclusion**

Staff agrees that a Section 8-503 order is appropriate and that Petitioners should be granted eminent domain authority. (ICC Staff Ex. 1.0, pp. 29-31.) No other party has opposed a Section 8-503 order or a grant of eminent domain authority. Therefore,

an order authorizing the construction of the Project, including the transmission lines and all necessary related facilities, should be granted under Section 8-503.

## **G. The Concerns Raised by Dynegy Regarding Expansion of the Substation Area and the Easement Agreement**

### **Position of Dynegy**

Dynegy proposed three conditions to the Commission's order that Dynegy asserted would rectify three concerns about the impact of the Project on Dynegy's Baldwin plant. Dynegy claimed the new line that will come into the substation at the Baldwin Plant would unnecessarily impact planned and future projects at the Baldwin Plant. (See DYN Ex. 1.0, pp. 4-5.) To mitigate this concern, Dynegy proposed a slight modification to the routing of the line. (*Id.*) Dynegy pointed out that Petitioners committed to the line routing as requested by Dynegy. (AmerenIP Ex. 9.0, p. 9.) Dynegy argues that this condition should be adopted as a part of the final Order in this case.

Second, Dynegy also expressed concern that the work at the substation will have an adverse impact on its facilities. In particular, Dynegy alleged that the expansion of the substation "will eliminate a large part of Dynegy's contractor parking lot. This parking lot is not only used for current contractor parking, but will be heavily used during the upcoming scrubber construction project." (DYN Ex. 1.0, p. 6.) Dynegy also argued that this issue was either proper for the Commission to consider, or, if it was not, Petitioners should not be entitled to use eminent domain authority to acquire the area needed for the expansion.

Dynegy's final concern relates to an Easement Agreement between the parties that covers the existing physical footprint of the Baldwin substation as well as changes made by AmerenIP that impact Dynegy's facilities at Baldwin. (DYN Ex. 1.0, p. 7.) Dynegy claimed that to ensure that AmerenIP's project remained least-cost, the Commission should order AmerenIP to comply fully with the provisions of the Easement Agreement. Dynegy argued that Petitioners contended that the Easement Agreement is not properly before the Commission and that Petitioners raised extraneous arguments about interpretation of the Easement Agreement. (DYN Init. Br., p. 7.) However, Dynegy agreed with AmerenIP that interpretation of private agreements is beyond the scope of this case. (*Id.*) Nevertheless, Dynegy concluded that its condition regarding compliance with the Easement Agreement should still be included.

### **Response of Petitioners**

With regard to the first condition regarding line routing, (DYN Init. Br., pp. 2-3), Petitioners agreed to Dynegy's proposed line adjustment and made a binding commitment to that route. (AmerenIP Ex. 14.0, p. 4; DYN Ex. 2.1.) Having committed to the adjustment, Petitioners do not see the need to make the line adjustment part of the Commission's Order. (Pet. Reply Br., p. 12.)

With regard to the second issue, in which Dynegy seeks a condition that would require AmerenIP to minimize the impact of substation expansion on the existing contractor parking lot and the Baldwin Plant's operations and future activities, Petitioners argue that Dynegy's concerns are premature. (Pet. Reply Br., p. 12.) Petitioners have stated that: "AmerenIP is in the process of conducting a property survey of the proposed transmission substation expansion. Once the survey is completed, AmerenIP will contact [Dynegy] to discuss the proposed expansion." (DYN Ex. 2.2.) Because the final design of the substation is not complete, Petitioners contend that Dynegy has no idea what the actual impact will be, and a reasonable approach would be for Dynegy to discuss the expansion with AmerenIP once the plans are finalized. (Pet. Reply Br., p. 12.)

Petitioners also pointed out that the substation expansion is not subject to Section 8-406 of the Act and does not require a Certificate or Commission approval under that Section. (DYN Cross Ex. A.) However, the fact that the substation is not subject to Section 8-406 does not mean that Petitioners cannot seek eminent domain authority for construction of the substation. Petitioners argue that eminent domain authority is obtained under Section 8-509 of the Act, 220 ILCS 5/8-509, and requires an order under Section 8-503, 220 ILCS 5/8-503. (Pet. Reply Br., p. 13.) Petitioners further assert that Dynegy has not argued that a Section 8-503 Order is not appropriate, has not addressed the substation expansion in the context of the requirements for a Section 8-503 Order, or otherwise demonstrated that the substation expansion into the contractor lot is not necessary "to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities." (*Id.*) To the contrary, Petitioners argue that the need for the Project is so great that, should it be necessary, Petitioners may use Dynegy's contractor parking lot for the substation expansion, acquiring it by eminent domain if needed. Petitioners state that their intent is to reach a mutually agreed solution to the parking lot problem posed by the planned substation expansion within the context of accepted business practices. Therefore, Petitioners believe there is no basis for Dynegy to argue that Petitioners be foreclosed from using eminent domain for the contractor parking lot.

With regard to the issue of the Easement Agreement, Petitioners point out that Dynegy agrees that interpretation of private agreements is beyond the scope of this proceeding. (DYN Init. Br., p. 7.) Petitioners also contend that it was Dynegy that first raised the issue of interpretation of the Easement Agreement. (Pet. Reply Br., p. 14.) Petitioners state that Dynegy first raised the issue of the Easement Agreement in its Direct Testimony, where Mr. Mason quoted at length from the Easement Agreement and offered the following interpretation: "The Easement Agreement requires, in relevant part, that AmerenIP 'Mitigate' the 'Adverse Impact' on DMG of projects such as the Baldwin-Rush Island project. Although these provisions would appear to be fairly straightforward and unambiguous even to a non-lawyer such as myself, AmerenIP has been unwilling to acknowledge its obligations under them to protect DMG from the adverse impact on DMG of AmerenIP's proposed activities at the Baldwin Plant with respect to the Baldwin-Rush Island project." (*Id.*; DNY Ex. 1.0, pp. 7-8.) In response, Petitioners committed to comply fully with the terms of the Easement Agreement. (AmerenIP Ex. 10.0, p. 6.) Petitioners argue that since both parties appear to agree

that they will comply with the Easement Agreement, their differences are clearly a matter of interpretation of the Easement Agreement, and, as Dynegy concedes, "the Commission need do nothing with it." (Pet. Reply Br., pp. 14-15.) Moreover, Petitioners contend that ordering Petitioners to comply with the Easement Agreement, a legally binding contract, would be superfluous (and, as Petitioners have already agreed to be bound by the Easement Agreement, pointless).

### **Commission Conclusion**

With regard to Dynegy's first proposed condition, regarding line routing, Petitioners have stated that they have made a binding commitment to the line adjustment Dynegy seeks. Therefore, there is no need to add a condition to the Commission order.

With regard to Dynegy's second proposed condition, on the substation expansion, the Commission notes that Petitioners are still undertaking to survey the area of the substation expansion. As a result Dynegy does not know (and has not offered evidence to show) whether the substation expansion will in fact have any adverse impact on Dynegy's facilities. Similarly, Dynegy has not offered any direct evidence that would call into question the necessity or appropriateness of the Section 8-503 Order or its application to the substation expansion. As a result, there is no evidentiary basis to conclude that Dynegy's proposed condition is necessary. Moreover, the proposed condition, which requires that impacts be "minimized" without further definition, is extremely vague, and would appear to invite further dispute. Therefore, the condition is rejected.

With regard to the Easement Agreement, it appears from the record that both Dynegy and AmerenIP have committed to abide by the Easement Agreement. Thus, there is no basis in the record to conclude that a condition that Dynegy and AmerenIP abide by the Easement Agreement is necessary. Moreover, the Easement Agreement, as a legal contract, is already binding on the parties to it. To the extent Dynegy and AmerenIP differ on the meaning of the Easement Agreement, this is a matter of contractual interpretation, which both Dynegy and AmerenIP agree is not for the Commission to become involved in. Therefore, the third condition is rejected as well.

### **H. Other Intervener Issues**

No Intervener has argued that Petitioners should not be granted a Certificate. Rather, the Landowner Interveners raised certain auxiliary issues that Petitioners contend are, on balance, irrelevant to the Commission's consideration of the approval criteria under Section 8-406(b). In particular, the Landowner Interveners expressed a wide variety of concerns related primarily to the route selected for the Baldwin-Rush Line, including the proximity of residences to the transmission line route, the impact of the transmission lines on property values of adjacent property, alleged health impacts from the presence of power lines, impacts of the transmission lines on farming activity, and the environmental and natural resource impacts of the transmission lines. Petitioners in their testimony responded in detail to the issues raised by the Landowner Interveners, explaining that they had addressed all of the Landowner Interveners'

concerns in the route selection process. (See, e.g., AmerenIP Exs. 8.0, pp. 2-3; 9.0, pp. 5-23; 10, pp. 1-7; 13.0, pp. 2-4; 14.0, pp. 4-6; 15.0, pp. 1-3; Pet. Init. Br., pp. 34-41.) Because none of the parties have raised these issues in Briefs (except to the extent discussed above), and because Petitioners have presented evidence that they addressed these concerns, the Commission concludes that further analysis of these issues is not warranted.

## **V. COMMISSION CONCLUSION**

For the reasons stated above, the Commission concludes that Petitioners have shown that the Project is in the public interest, that the criteria for issuing a Certificate under Section 8-406 of the Act have been met (with Ameren Transco's participation in the Project) and a Certificate should be issued to AmerenIP and Ameren Transco to construct the Project. The Commission also concludes that the Petitioners' primary Green route should be adopted for the Transmission Lines. Further, the Commission concludes that because Ameren Transco's participation in the Project is necessary, Ameren Transco should be granted a Certificate to operate as a public utility. In addition, for the reasons stated above, the Commission finds that the JOA is reasonable and should be approved, subject to the condition proposed by Staff. Finally, the Commission concludes that an order authorizing construction of the Project under Section 8-503 of the Act is appropriate and should be granted.

## **VI. FINDING AND ORDERING PARAGRAPHS**

The Commission having examined the entire record herein, and being fully advised in the premise, is of the opinion and finds that:

- (1) AmerenIP is an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois and is a public utility within the meaning of Section 3-105 of the Act;
- (2) Ameren Transco is a newly-formed Illinois corporation that will fund, construct and operate the Project in conjunction with AmerenIP;
- (3) the Commission has jurisdiction over AmerenIP and Ameren Transco and the subject matter herein;
- (4) AmerenIP and Ameren Transco propose to construct, operate, and maintain a new electric transmission line together with such related facilities, to secure adequate, efficient, and reliable service in Monroe, Randolph, St. Clair, and Washington Counties, Illinois as shown on AmerenIP Exhibits 3.2 and 6.1;
- (5) the proposed Project is necessary, and represents the best and the least-cost means of constructing the facilities;
- (6) Ameren Transco's participation in the Project is necessary and should be approved;

- (7) Ameren Transco should be granted a Certificate of Public Convenience and Necessity to operate as a public utility under the Act;
- (8) the terms of the Joint Operating Agreement between AmerenIP and Ameren Transco are reasonable and should be approved;
- (9) AmerenIP and Ameren Transco should provide a report to the Chief Clerk of the Commission and to the Manager of the Accounting Department of the Commission, on an annual basis, beginning March 31, 2007, for the prior calendar year, containing a description of services and charges provided by AmerenIP and Ameren Transco to their affiliates under the JOA; a description of services and charges provided by the affiliates to AmerenIP and Ameren Transco under the JOA; AmerenIP and Ameren Transco's monthly billing to and payments received from their affiliates under the JOA; the amounts of any allocated costs under the JOA; and supporting documentation for each allocation;
- (8) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (7) AmerenIP and Ameren Transco have demonstrated those elements necessary to be granted a Certificate of Public Convenience and Necessity authorizing the construction of the new facilities;
- (9) AmerenIP and Ameren Transco have demonstrated that the primary Green routes for the transmission lines, as shown on AmerenIP Exhibits 3.2 and 6.1, are the best routes and those routes should be approved; and
- (11) AmerenIP and Ameren Transco have demonstrated those elements necessary to be granted an Order under Section 8-503 of the Act.

IT IS THEREFORE, ORDERED by the Illinois Commerce Commission that Illinois Power Company d/b/a AmerenIP's and Ameren Illinois Transmission Company's petition seeking a Certificate of Public Convenience and Necessity be and is hereby granted; said certificate shall read as:

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

IT IS HEREBY CERTIFIED that the public convenience and necessity require: (1) construction, operation, and maintenance by Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company of transmission lines as described in the record in Docket No. 06-0179, together with such related facilities, ties to adjacent transmission lines, or repairs, as are or may become

reasonably necessary to promote the public convenience and necessity and to secure adequate service; and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that the primary Green routes for the transmission lines, as shown on AmerenIP Exhibits 3.2 and 6.1, are hereby approved;

IT IS FURTHER ORDERED that Ameren Transco is hereby granted a Certificate of Public Convenience and Necessity to operate as a public utility under the Act;

IT IS FURTHER ORDERED that the terms of the Joint Operating Agreement between AmerenIP and Ameren Transco are reasonable and are approved;

IT IS FURTHER ORDERED that AmerenIP and Ameren Transco provide a report to the Chief Clerk of the Commission and to the Manager of the Accounting Department of the Commission, on an annual basis, beginning March 31, 2007, for the prior calendar year, containing a description of services and charges provided by AmerenIP and Ameren Transco to their affiliates under the JOA; a description of services and charges provided by the affiliates to AmerenIP and Ameren Transco under the JOA; AmerenIP and Ameren Transco's monthly billing to and payments received from their affiliates under the JOA; the amounts of any allocated costs under the JOA; and supporting documentation for each allocation;

IT IS FURTHER ORDERED that AmerenIP and Ameren Transco be granted an Order under Section 8-503 of the Act authorizing construction of the transmission lines as described in the record in Docket No. 06-0179, together with such related facilities as are or may become reasonably necessary to promote the public convenience and necessity and to secure adequate service;

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final and is not subject to the Administrative Review Law.

Dated: January 8, 2007

Respectfully submitted,

ILLINOIS POWER COMPANY d/b/a  
AMERENIP, and  
AMEREN ILLINOIS TRANSMISSION  
COMPANY

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