

**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

**REPLY BRIEF ON EXCEPTIONS OF
ILLINOIS POWER COMPANY D/B/A AMERENIP
AND AMEREN ILLINOIS TRANSMISSION COMPANY**

Dated: May 2, 2007

**REPLY BRIEF ON EXCEPTIONS OF ILLINOIS POWER COMPANY D/B/A
AMERENIP AND AMEREN ILLINOIS TRANSMISSION COMPANY**

I. INTRODUCTION

This is the Reply Brief on Exceptions of Illinois Power Company d/b/a AmerenIP ("AmerenIP") and Ameren Illinois Transmission Company ("Ameren Transco," together, "Petitioners"). Petitioners reply herein to the Briefs on Exceptions of Staff of the Illinois Commerce Commission ("Staff") and Unions 51, 309, 649, 702 and 1306 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW").

II. DISCUSSION

A. Response to Staff

1. Staff's Financial Arguments for Not Granting a Certificate to Ameren Transco Must Be Rejected.

Staff is correct that Section 8-406(b)(3) of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/8-406(b)(3), requires Petitioners to show that they can finance the Project without adverse financial consequences for either the utilities or their customers. Staff's argument in its Brief on Exceptions (pp. 3-5, 7), however, that Petitioners have not made this showing, is not correct. Petitioners have demonstrated the only way that the requirements of Section 8-406(b)(3) can be met is through the joint financing arrangement between AmerenIP and Ameren Transco. As a result, Staff's apparent assertion the Commission must "determine that AmerenIP is not capable of financing the Project" without adverse consequences (Staff BOE, p. 7) misconstrues Section 8-406(b)(3). Section 8-406(b)(3) requires a showing that "the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." But in this case, it is not one, but two, utilities that are seeking to construct the Project jointly. Thus, Petitioners must show that AmerenIP and Ameren Transco

are together capable of financing the proposed construction, not just that AmerenIP is, by itself, incapable of financing the Project. Petitioners have made this showing. (*See* Init. Br., pp. 15-24.)

Nevertheless, Petitioners have shown that AmerenIP is not capable of financing the Project alone, and that therefore joint financing with Ameren Transco is the only way to satisfy Section 8-406(b)(3). Petitioners established in their testimony (*see* AmerenIP Exs. 4.0, pp. 4-8; 11.0, pp. 1-8; 16.0, pp. 2-6) and briefs (*see* Pet. Init. Br., pp. 15-24; Reply Br., pp. 7-10) that AmerenIP's financial condition is already weakened and it cannot undertake 100% of the Project without a meaningful risk that it would experience significant adverse financial consequences. Staff's view to the contrary is its unsubstantiated opinion that ratings agencies will distinguish between the types of debt on AmerenIP's books – notwithstanding Staff witness Hardas's admission that he was unable to find any example of a ratings agency doing so. (ICC Staff Ex. 6.0R, p. 3).

Staff acknowledges that if AmerenIP funds 100% of the Project, AmerenIP will experience financial consequences and its credit metrics will decline. (Staff Init. Br., p. 13; Staff BOE, p. 5.) Nevertheless, Staff asserts that there is no connection between these financial consequences and a ratings downgrade. (Staff BOE, p. 5.) In particular, Staff argues that there is no evidence connecting a downgrade to AmerenIP's financing of 100% of the Project. (*Id.*) No one, however, can predict what the ratings agency will do, as Staff witness Hardas acknowledges. (Tr. 191.) As a result, Staff cannot be certain a downgrade will not occur. Moreover, Mr. Hardas acknowledges that serious consequences could result from a downgrade. (Pet. Init. Br., pp. 17-18.) As the ALJPO correctly notes (p. 28), "the record is clear that the effects of a credit downgrade would be potentially serious in magnitude." Thus, Staff's proposal

puts AmerenIP and its customers at significant risk of adverse financial consequences in order to avoid the participation of Ameren Transco, which, by contrast, would hold no meaningful risk of adverse consequences for AmerenIP or its customers. The ALJPO properly embraces this point in saying (p. 28): "In the Commission's view, given IP's financial condition and other circumstances of record, forcing [Ameren]IP to take that [financial] risk does not appear to be warranted assuming an alternative is available that avoids it and is otherwise reasonable."

Staff also argues Petitioners have not shown that the Project will not have adverse financial impacts on Ameren Transco as a utility. (Staff BOE, p. 4.) This is not correct. Petitioners' witness Mr. Lee Nickloy demonstrated that Ameren Transco would be a special purpose entity formed to construct and own a portion of the Project, without customers, service obligations, or the need to make other capital expenditures to maintain other assets, and without other outstanding securities, and, therefore, would not experience adverse financial consequences from financing the Project. (AmerenIP Ex. 4.0, p. 7.)

Staff also asserts that this proceeding is "unusual" because AmerenIP cannot finance construction of the Project on its own. (BOE, p. 4.) Even if this is an unusual case, however, that is not a basis for rejecting the use of Ameren Transco as a joint owner of the Project. Petitioners have demonstrated that AmerenIP and Ameren Transco can together finance the Project without risk of adverse financial consequences to either them or their customers. Staff's arguments to the contrary should be rejected.

2. Staff's Public Policy Arguments for Denying Ameren Transco a Certificate Lack Evidentiary Support.

Staff asserts that as an affiliate, Ameren Transco should not receive a certificate due to certain "incremental" social costs it might impose. (Staff BOE, pp. 5-6.) Staff, however, has not

established that such social costs, whether regulatory costs or the costs of alleged affiliate abuse, would actually occur. Instead, as Petitioners point out in their Initial Brief (pp. 28-32), Staff witness Rearden speculates about possible social costs, without providing any evidence that such costs are likely to exist in the case of Ameren Transco, much less that they are sufficiently serious to warrant deny Ameren Transco a Certificate.

In particular, Staff now asserts that it has become "increasingly concerned" about affiliate abuse, citing a recent *People's Gas* proceeding. (Staff BOE, p. 6.) However, there is no evidence in the record supporting this conclusion, and Mr. Rearden offered no testimony regarding this increasing concern, notwithstanding the fact that the *People's Gas* docket was opened in 2001. In fact, according to the Commission's e docket, Mr. Rearden was a witness for the Staff in that case and filed testimony in the docket in February, 2005. Even so, Mr. Rearden did not identify any examples of actual affiliate abuse in his testimony. Instead, Staff now cites the example of the *People's Gas* case for the first time in their Brief on Exceptions. As a result, Staff's arguments on this point should be discounted. Moreover, as the ALJPO points out (p. 28), "both entities [AmerenIP and Ameren Transco] would be public utilities under the jurisdiction of the Commission. Thus, issuance of a Certificate to Transco will actually give the Commission more oversight authority over Transco than is present when the affiliated interest arrangement involves an unregulated affiliate."

Staff's public policy arguments essentially turn on the idea that certification of Ameren Transco will have no benefits. However, Petitioners have shown that involvement of Ameren Transco in the Project will have material benefits in reducing financial risks to AmerenIP. Because Staff's public policy arguments lack evidentiary support or any other concrete basis, Staff's public policy concerns are not warranted.

3. Staff's Proposed Exceptions Regarding Eminent Domain Are Unnecessary.

Staff asserts that because "one of the results of an order granting Section 8-503 authority is to make it possible for a public utility to take the order to circuit court and request an order granting eminent domain as needed for the authorized construction, the Commission should strictly define the authority for use of eminent domain that it is granting to a utility." (Staff BOE, p. 8.) This concern is misplaced. In this proceeding, Petitioners are seeking a Certificate under Section 8-406 of the Act, by demonstrating that the Project is in the public interest, and an order under Section 8-503 of the Act, 220 ILCS 5/8-503, by demonstrating that the Project is necessary and ought to be constructed. Petitioners have not, however, sought condemnation authority in this case. Although Staff is correct that an order under Section 8-503 of the Act, is, pursuant to Section 8-509 of the Act, 220 ILCS 5/8-509, a prerequisite to obtaining eminent domain authority, Commission approval is required before a utility seeks to condemn property. *Illinois Bell Tel. Co. v. Lewis*, 117 Ill. App. 3d 72 (4th Dist. 1983). In past Commission cases, utilities seeking eminent domain authority have expressly requested a grant of such authority pursuant to Section 8-509 of the Act, either in conjunction with a petition seeking an 8-503 order or in a separate proceeding. *See, e.g., Central Ill. Pub. Serv. Co.*, Docket 95-0484 (Jul 17, 1996); *Central Ill. Pub. Serv. Co.*, Docket 90-0022 (Oct. 3, 1990). As the record in this proceeding shows, AmerenIP is in the process of contacting and negotiating with landowners to acquire necessary rights of way. (AmerenIP Ex. 2.0, pp. 3-5.) These negotiations are ongoing, however, and Petitioners have not determined whether there will be a need to seek eminent domain authority for specific parcels. (ICC Staff Ex. 1.0, pp. 29-30.) As a result, Petitioners have not requested eminent domain authority in this proceeding. If a Certificate under Section 8-406 and a Section 8-503 order are granted, Petitioners intend to continue the negotiation process. Should

Petitioners subsequently determine there is a need to condemn certain property in order to construct the Project, Petitioners will seek Commission approval to exercise eminent domain authority in a separate proceeding. Therefore, Staff's concerns about the exercise of eminent domain authority are premature, and, because Petitioners are not seeking eminent domain authority in this proceeding, unnecessary.

In addition, Staff's proposed exceptions to the Section 8-503 discussion in the ALJPO (Staff Exceptions, p. 9) could inappropriately restrict the scope of a Section 8-503 order. Petitioners seek an order under Section 8-503 authorizing construction of the "Project." (Am. Pet., p. 14, ¶ 38.) The "Project" that is the subject of this proceeding is defined as the three new 345 kV transmission lines and related facilities. (*See* Am. Pet., p. 2, ¶ 4; AmerenIP Ex. 4.0, p. 3.) The ALJPO confirms this definition when it states (p. 8) that, "[a]s indicated above, the proposed Project involves the construction of three 345 kV transmission lines and related facilities." The ALJPO grants a Section 8-503 Order for the Project (pp. 38-39), and Staff's Exceptions (p. 9) also appear to grant a Section 8-503 Order for the Project. However, in proposing to limit the application of eminent domain authority to the proposed routes shown in AmerenIP Exhibits 18.0 and 18.0A, Staff also appears to limit the scope of the Section 8-503 order to just the transmission line routes, and to exclude the "related facilities." Such a limitation is inconsistent with the grant of a Section 8-503 order to construct the Project, and is inconsistent with the Section 8-503 relief requested by Petitioners. Such a limitation also inconsistent with Staff's recommended exception (Staff Exceptions, p. 9) that, under Section 8-503, the Project is "necessary and should be erected." Moreover, there is no basis for such a limitation in the record of this proceeding, and it therefore should be disregarded.

B. Response to IBEW

1. IBEW's Arguments Rest on the Faulty Premise that Petitioners Can Only Meet the Requirements of Section 8-406(b)(2) by Committing To Use Existing Alliance Contractors.

IBEW argues that Petitioners can only demonstrate that they have "taken sufficient action to ensure adequate and efficient construction and supervision" of the Project if Petitioners are required to use existing alliance contractors to perform the construction of the Project. (IBEW BOE, pp. 5-6.) IBEW's premise, however, is faulty, as it assumes that a requirement to use existing alliance contractors (or alliance contractors at all) is the only way to demonstrate adequate and efficient construction under Section 8-406(b)(2). IBEW cites no authority in support of its claim that Petitioners must use existing alliance contractors in order to meet Section 8-406(b)(2). In fact, contrary to IBEW's assertion (BOE, p. 1), Petitioners' "burden" is to show that Petitioners are capable of efficiently managing and supervising construction of the Project, and have taken sufficient action to ensure adequate and efficient construction and supervision thereof. There is no set formula that mandates how that burden is met.

Petitioners have demonstrated that they can efficiently manage and ensure adequate construction of the Project. (AmerenIP Exs. 9.0, pp. 9-10; 14.0, p. 5; ICC Staff Ex. 1.0, pp. 28-29.) Petitioners' witness Ms. Dencker explained that construction of the lines will be performed by one or more of Ameren's alliance contractors and that such contractors are fully qualified to perform the work. (AmerenIP Ex. 9.0, p. 9.) Ms. Dencker also explained that although it was not possible to be certain that existing alliance contractors would be used to construct the line, there was a strong likelihood that Petitioners would continue to use the services of existing contractors. (AmerenIP Ex. 14.0, p. 5.) Moreover, whoever was used would be fully qualified to perform the construction and maintenance of transmission lines. (*Id.*) 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" (IBEW Ex. 2.0, p. 6), Petitioners meet the requirements of Section 8-406(b) with regard to management of construction of the lines. (*Id.*, pp. 2-7.) As a result, there can be no doubt that the record fully supports a finding that the requirements of Section 8-406(b)(2) has been met.

IBEW also asserts (BOE, p. 5) that the ALJPO improperly relies on Petitioners' "promise" to use personnel to construct the Project who possess the training and qualifications to comply with the standards of the National Electrical Safety Code and to use contractors in the future that possess the same qualifications and abilities of the contractors in place today. This is not correct. These commitments are not mere "promises" by Petitioners, rather, the ALJPO requires that Petitioners abide by these commitments. The ALJPO states:

Petitioners have committed '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.' Further, Petitioners 'intend to use contractors in the future that possess the same qualifications and abilities of the contractors in place today.' In terms of showing they are 'capable of efficiently managing and supervising the construction process and have taken sufficient action to ensure adequate and efficient construction and supervision thereof', the *Commission finds that these two commitments are reasonable and that Petitioners shall comply with them.*

(ALJPO, p. 36 (emphasis added).) As discussed above, this requirement is supported by the evidence of Petitioners' commitment to use qualified personnel to construct the Project.

(AmerenIP Ex. 14., p. 5; *see* Pet. Reply Br., pp. 10-13.) The ALJPO's requirement that Petitioners comply with their commitments means Petitioners will be bound to use qualified personnel in constructing and maintaining the transmission lines, both now and in the future, and therefore IBEW's concerns about the future qualifications of alliance contractors are baseless.

IBEW also asserts that Petitioners' commitment with regard to use of qualified personnel to construct the Project is "tantamount to a settlement". (IBEW BOE, p. 6.) This assertion is without merit or logic. There is no basis in the record to conclude that Petitioners' commitments represent a settlement. If every example of a utility making a commitment to undertake certain actions, and having the Commission order the utility to comply with those commitments, was a settlement, numerous Commission orders would have to be considered settlements requiring unanimous consent. Clearly, this is not the case. *See Grens, et al. v, Illinois-American Water Co.*, Dockets 05-0681/06-0094/06-0095 (April 18, 2007) (utility committed, in testimony and stipulation, to undertake various actions, and Commission ordered utility to comply with those commitments; no settlement requiring unanimous consent was found). Further, IBEW cites no authority to support its contention that there can be some kind of implicit settlement between the Commission and Petitioners. Because there is no basis for IBEW's assertion in this regard, it should be rejected.

Finally, Petitioners also note that IBEW, in its proposed exceptions (IBEW BOE, App. A, p. 38), suggests that the Commission should find that, among other things: "The record is devoid of any evidence that contractors other than Ameren's current 'alliance contractors' are fully qualified to perform the project work." While Petitioners reject IBEW's exceptions in their entirety, Petitioners point out that this proposed statement in particular is false. As discussed above, Petitioners' witness Ms. Dencker testified that whatever contractors were used would be fully qualified to perform the construction and maintenance of transmission lines. (AmerenIP Ex. 14.0, p. 5.) Therefore, there is no basis for IBEW's proposed exception.

2. The ALJPO's Concern Regarding Commission Involvement in Labor Relations Is Valid.

IBEW argues, at some length, that the ALJPO improperly concluded that IBEW's recommendation could draw the Commission into labor relations issues between IBEW and Petitioners. Because, as discussed above, Petitioners have shown that they meet the requirements of Section 8-406(b)(3), and because the ALJPO requires Petitioners to comply with their commitment to use qualified personnel, IBEW's concerns in this area are baseless and their argument about Commission involvement in labor relations irrelevant. However, Petitioners note that the Commission only has those powers given it by the legislature through the Act. *Business & Prof. People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201 (1989). Nowhere in the Act does is the Commission granted authority to intervene in labor relations issues. As Petitioners pointed out in their Reply Brief (p. 11), the Commission has no authority to insist that certain alliance contractors be used in perpetuity (what if a contractor went out of business), and the Commission cannot dictate personnel decisions to the utility except in the most limited circumstances when required by statute. Moreover, as the Commission has noted in past cases, certain labor relations issues are preempted by Federal law, which forbids state and local activities that interfere with certain labor rights. *Illinois Commerce Comm'n on its Own Motion: Revision of 83 Ill. Adm. Code 732*, Docket 02-0426, Interim Order, p. 35 (Feb. 5, 2003). In fact, in that same rulemaking, which was cited by IBEW as a example of the Commission's authority over labor issues, the Commission concluded that it had rulemaking authority precisely because "payment of credits to customers is *merely of a peripheral concern to labor issues* addressed by the federal labor laws." (*Id.*, p. 36.) Thus, there is no basis to conclude that the Commission's concern about getting involved in labor relations issues over which it has no jurisdiction is invalid.

III. CONCLUSION

For all the reasons stated, the Commission should reject the proposed exceptions of Staff and IBEW.

Dated: May 2, 2007

Respectfully submitted,

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