

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY, )  
d/b/a AmerenCIPS )  
) Docket No. 07-0532  
Petition for a Certificate of Public Convenience and )  
Necessity, pursuant to Section 8-406 of the Illinois )  
Public Utilities Act, to construct, operate and maintain )  
new 138,000 volt electric lines in Madison County, )  
Illinois. )

**REPLY BRIEF OF CENTRAL ILLINOIS PUBLIC  
SERVICE COMPANY, d/b/a AmerenCIPS**

Dated: July 11, 2008

## **I. SUMMARY OF PETITIONER'S REPLY**

Central Illinois Public Service Company d/b/a AmerenCIPS (“AmerenCIPS” or “Petitioner”) seeks issuance by the Illinois Commerce Commission (“Commission”) of a Certificate of Public Convenience and Necessity (“Certificate”) pursuant to Section 8-406 of the Public Utilities Act (“Act”), 220 ILCS 5/8-406, authorizing AmerenCIPS to construct, operate, and maintain two new 138 kV electric lines (the “Transmission Lines”).

Petitioner has demonstrated, and both Staff and WRB Refining LLC (“WRB”) agree, that the Transmission Lines meet the statutory requirements for a Certificate under Section 8-406 of the Act and that a Certificate should be issued for the Transmission Lines.

The only issue remaining in this case, therefore, is the narrow issue of whether a Section 8-503 order should be issued with respect to Line 1. Petitioners have demonstrated that the requirements of Section 8-503 have been met, and therefore should receive an order authorizing the Transmission Lines under Section 8-503. Staff’s concern, with respect to Line 1, that a Section 8-503 order amounts to a grant of eminent domain authority, is unfounded because (i) AmerenCIPS has not requested eminent domain authority in this proceeding, and (ii) for the Commission to grant eminent domain authority, the utility must show not just that an order under Section 8-503 has been received, but that the project is necessary and that the utility has negotiated for rights-of-way with affected landowners in good faith.

## **II. ARGUMENT**

### **A. The Parties Agree that a Certificate Should Be Issued.**

As AmerenCIPS explained in its Initial Brief (pp. 2-7), the criteria for issuance of a Certificate for the Transmission Lines under Section 8-406 of the Act have been met. Staff recommended that the Commission grant AmerenCIPS’ request for a Certificate for the two Transmission Lines and agreed with AmerenCIPS’ plan to modify its electric service to the

Wood River Refinery (“WRR”) from 34.5 kV to 138 kV because: (1) supplying the refinery at 138kV would be more efficient, (2) delivery voltage at 138 kV will result in lower delivery service charges for the refinery, and (3) supplying the refinery with 138 kV lines that are dedicated to the refinery should result in more reliable service for both the refinery and other area customers. (Staff Init. Br, p. 5.) Staff also agreed with the primary routes selected for the Transmission Lines. (Id.) Likewise, WRB agreed in its Initial Brief (pp. 2-5) that the Transmission Lines are necessary and will strengthen the reliability of the distribution system for the WRR and surrounding area, and that a Certificate should be granted. Thus, there is no dispute among the parties that a Certificate should be issued for the Transmission Lines for the primary routes proposed by AmerenCIPS.

**B. Staff’s Concerns in its Initial Brief About Issuance of a Section 8-503 Order for Line 1 Are Unwarranted.**

In its Initial Brief (p. 6), Staff supports the issuance of a Commission order pursuant to Section 8-503 of the Act for COP Sub Tap 2 –Primary (“Line 2”), but it opposes the issuance of such an order for COP Sub Tap 1 –Primary (“Line 1”). Staff’s opposition to the issuance of a Section 8-503 order for Line 1 should be rejected. As AmerenCIPS explained in its Initial Brief (pp. 8-14), Staff misunderstands the nature of the Commission’s approval of eminent domain authority, and so has not identified any basis for rejecting a Section 8-503 order for Line 1.

**1. Issuance of a Section 8-503 Does Not, By Itself, Result in a Grant of Eminent Domain Authority.**

Staff’s opposition to granting Petitioners an order under Section 8-503 of the Act for Line 1 is based on the conclusion that granting a Section 8-503 order would, by itself, amount to a grant of eminent domain authority to Ameren. As AmerenCIPS explained in its Initial Brief (pp. 8-10), it is not seeking eminent domain authority in this proceeding. (AmerenCIPS Ex. 6.0, p. 2; AmerenCIPS Cross Ex. 1, p. 2.) AmerenCIPS has also made clear that if negotiations with

property owners are unsuccessful, then AmerenCIPS will, as appropriate, seek eminent domain authority from the Commission in a separate proceeding. (AmerenCIPS Cross Ex. 1, p. 2.) As AmerenCIPS also explained in its Initial Brief, even with a Section 8-503 order, a utility still must request and obtain Commission approval authorizing the use of eminent domain authority. See Illinois Power Company d/b/a AmerenIP, Docket 06-0179, Order, p. 40 (“[i]f Petitioners later determine there is a need to seek eminent domain, they will need to obtain Commission authorization before doing so”); Illinois Bell Tel. Co. v. Lewis, 117 Ill. App. 3d 72 (4th Dist. 1983). The exercise of eminent domain can therefore not occur until a utility expressly requests and receives Commission approval pursuant to Section 8-509, even though the utility may already have a Section 8-503 order.

Moreover, a utility seeking eminent domain authority must show more than receipt of a Section 8-503 order. To obtain Commission approval, the utility must also show that it has negotiated in good faith with the affected property owners and that the utility has diligently sought to acquire the necessary land rights. TransCanada Keystone Pipeline, Docket 06-0458 (April 4, 2007). The demonstration of good faith negotiations is distinct from the requirement that the utility show that construction is necessary (which is satisfied by a Section 8-503 order) because the two inquiries require different evidence. Thus, there is no basis for a concern that AmerenCIPS will somehow receive eminent domain authority as a result of a Section 8-503 order in this case.

Staff argues (Staff Init. Br., p. 6) that the language of Section 8-509 of the Act supports a conclusion that issuance of a Section 8-503 automatically equals a grant of eminent domain authority. A full reading the language of Section 8-509, however, shows that this is not the case. The operative language of Section 8-509 states: “When necessary for the construction of any

alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.” 220 ILCS 5/8-509 (emphasis added). Thus, a grant of eminent domain authority is warranted only “when necessary” for construction authorized under Section 8-503. Put another way, receiving Section 8-503 order is not by itself sufficient under Section 8-509 for a grant of eminent domain authority; rather eminent domain must also be found to be necessary for the construction of facilities. This is consistent with the requirements for Commission approval described in AmerenCIPS’ Initial Brief (pp. 9-10), under which a utility must show that the project is still necessary and it has negotiated in good faith with landowners, but needed land rights can only be obtained by eminent domain. In short, a grant of eminent domain authority requires a showing that the construction cannot be completed without eminent domain and so eminent domain is “necessary” for the construction. Therefore, the language of Section 8-509 itself makes clear that the Commission must authorize eminent domain separately from a Section 8-503 order.

Staff’s assertion (Staff Init. Br., p. 7) that property owners would be unaware their property would be “at risk” for eminent domain and would have lost their opportunity to present evidence in opposition to a line route once an order pursuant to Section 8-503 is also unfounded. As AmerenCIPS explained in its Initial Brief (pp. 11, 13-14), a property owner with a concern about a potential transmission line route would present evidence about the route at the first opportunity, a Certificate proceeding. Moreover, a property owner would be notified of a Certificate proceeding under Commission rules and so would have an opportunity to participate (and, in fact, as AmerenCIPS explained (AmerenCIPS Initial Br., p. 11), in this case, property owners along Ameren’s proposed route have already been given notice and the opportunity to

present concerns regarding the line routing, both informally prior to this proceeding and formally during it. (AmerenCIPS Exs. 2.0, pp. 4-5; 8.0, p. 2.)

A Section 8-503 order is not the sole prerequisite for a grant of eminent domain authority. A utility seeking eminent domain authority must expressly request such authority, and then show that the utility has negotiated with the parcel owners in good faith, and that there are parcels which will need to be condemned. Since the type of evidence needed to support such showings will be different from that involved in a proceeding to obtain either a Section 8-503 order or a Section 8-406 Certificate, the condemnation approval proceeding can appropriately be a separate proceeding from a Section 8-503 or 8-406 proceeding.

**2. AmerenCIPS Has Shown That a Section 8-503 Order Should Be Granted for Line 1**

Staff also suggests (Staff Init. Br., pp. 7-8), that Sections 8-406 and 8-503 could be interpreted so that a Section 8-406 Certificate automatically justifies a Section 8-503 order. This is also incorrect. Although the nature of the evidence is similar, the Commission must find separately that the requirements of Section 8-406 and Section 8-503 has been met. In this proceeding, AmerenCIPS has shown that the Transmission Lines meet both the requirements of Section 8-406 and 8-503. (AmerenCIPS Init. Br., pp. 4-7.) Staff's suggestion to the contrary – that Line 1 is not necessary to supply the WRR (Staff Init. Br., pp. 6-7), is not supported by the record. AmerenCIPS has demonstrated (AmerenCIPS Init. Br., pp. 6-7) that the Transmission Lines are necessary to provide adequate reliable and efficient service to the WRR and, equally importantly, will improve the reliability in and for the surrounding areas of Hartford, Roxanna, and South Roxanna. (See AmerenCIPS Ex. 1.0, p. 6.) WRB, in its Initial Brief (pp. 2-5) and its testimony, confirms that both of the two Transmission Lines are necessary for supplying the WRR and will “strengthen the reliability and efficiency of the distribution system for...the

surrounding area.” In addition, the majority of Line 1 is on WRB's property, so it is unlikely that landowners would be “inconvenienced” by this route in any way that landowners on Line 2 (which Staff supports an 8-503 order for) would not be. In fact, Staff itself agrees that supplying the WRR at 138kV would be more efficient and should result in more reliable service for both the WRR and other area customers. (Staff Init. Br, p. 5.) Thus, there is no basis to conclude that a Section 8-503 is not warranted for Line 1, and in fact the record supports an issuance of a Section 8-503 order for Line 1.

### **III. CONCLUSION**

For the foregoing reasons, and for the reasons set forth in its Initial Brief, Petitioner respectfully requests that the Commission: (i) grant a Certificate of Public Convenience and Necessity authorizing AmerenCIPS to construct, operate and maintain two new 138 kV electric lines in Madison County, Illinois; and (ii) authorize construction of both Transmission Lines pursuant to Section 8-503 of the Act.

Dated: July 11, 2008

Respectfully submitted,

CENTRAL ILLINOIS PUBLIC SERVICE  
COMPANY, d/b/a AmerenCIPS

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