

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER COMPANY,)	
d/b/a AmerenIP, and)	
AMEREN ILLINOIS TRANSMISSION)	
COMPANY)	Docket No. 08-0291
)	
Petition for an Order pursuant to Section)	
8-509 of the Public Utilities Act approving)	
Petitioners' use of eminent domain power.)	
)	(Consol.)
ILLINOIS POWER COMPANY,)	
d/b/a AmerenIP, and)	
AMEREN ILLINOIS TRANSMISSION)	
COMPANY)	Docket No. 08-0449
)	
Petition for an Order pursuant to Section)	
8-509 of the Public Utilities Act approving)	
Petitioners' use of eminent domain power.)	

**SUGGESTED ORDER OF
ILLINOIS POWER COMPANY, d/b/a AmerenIP,
and AMEREN ILLINOIS TRANSMISSION COMPANY**

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I. PROCEDURAL HISTORY

On May 1, 2008, Illinois Power Company d/b/a AmerenIP (“AmerenIP”) and Ameren Illinois Transmission Company (“AITC,” together, “Petitioners”) filed a petition initiating Docket 08-0291 and requesting eminent domain authority for certain parcels of land along an electric transmission line route, the “Prairie West Line”. On July 23, 2008, Petitioners also filed a petition initiating Docket 08-0449 and requesting eminent domain authority with respect to certain parcels of land along a second electric transmission line route, the “Baldwin Rush Line”. Petitioners had sought, and received, a Certificate of Public Convenience and Necessity (“Certificate”) for these transmission lines under Section 8-406 of the Act, 220 ILCS 5/8-406, and an order authorizing the lines to be built under Section 8-503 of the Act, 220 ILCS 5/8-503, in a prior docket, Docket 06-0179.

No parties intervened in Docket 08-0291. A petition to intervene by Dynegy Midwest Generation, Inc. (“Dynegy”) was filed in Docket 08-0449 on July 30, 2008. A petition to intervene was also filed in Docket 08-0449 by certain landowners on August 11, 2008.

In each of the consolidated dockets, Petitioners offered the testimony of Mr. Rick Trelz, Dr. Christopher Pflaum, and Ms. Tracy Dencker. Staff offered the Affidavits of Mr. Ronald Linkenback. In Docket 08-0449, Dynegy offered the testimony of Daniel Roethemeyer.

In Docket 08-0291, on September 10, 2008, Staff filed a motion (“08-0291 Motion To Strike”) to strike the entirety of the testimony of Petitioners’ witnesses Ms. Dencker and Dr. Pflaum, as well as most of Mr. Trelz’s testimony, on the basis that an 8-509 proceeding should be “limited to making a determination as to whether the Commission has entered an Order under Section 8-503 of the Act.” The Administrative Law Judge (“ALJ”) denied the 08-0291 Motion To Strike. Staff petitioned for interlocutory review of the ALJ’s decision. The Commission denied Staff’s petition, thereby confirming that Petitioners’ evidence was properly admissible to support Petitioners’ request for eminent domain authority under Section 8-509.

Similarly, in Docket 08-0449, Staff filed a motion (“08-0449 Motion to Strike”) to strike the entire testimony of Petitioners’ witnesses Ms. Dencker and Dr. Pflaum, as well as most of Mr. Trelz’s testimony, once again on the basis that an 8-509 proceeding should be “limited to making a determination as to whether the Commission has entered an Order under Section 8-503 of the Act.” (Staff’s Motions to Strike in Dockets 08-0291 and 08-0449 are collectively referred to as the “Motions to Strike”.) The ALJ also denied the 08-0449 Motion to Strike.

A hearing was held on February 4, 2009, at which Dockets 08-0291 and 08-0449 were consolidated and the record for the consolidated proceeding was marked “Heard & Taken.”

II. BACKGROUND

In 2001, AmerenIP was notified by Prairie State Generating Company, LLC, an independent power producer, that it was developing an electric generating facility in Washington County, Illinois (“Prairie State Facility”). In order to accommodate the Prairie State Facility, and as required by FERC Order No. 2003, Petitioners proposed to construct three 345 kV transmission lines (the Prairie South Line, the Prairie West Line and the Baldwin Rush Line) and related facilities (together, the “Project”). Petitioners sought a Certificate under Section 8-406 of the Act and an order authorizing the Project to be built under Section 8-503 of the Act in Docket 06-0179.

On May 16, 2007 the Commission in Docket 06-0179: (i) granted Petitioners a Certificate for the Project and approved the routes for the three transmission lines; and (ii) authorized Petitioners to construct the Project pursuant to Section 8-503 of the Act. The Commission noted in Docket 06-0179, with respect to eminent domain, that “[s]hould Petitioners subsequently determine there is a need to condemn certain property in order to construct the Project, they will seek Commission approval to exercise eminent domain authority in a separate proceeding.” Docket 06-0179, Final Order, p. 40. The Commission then required Petitioner, if there was a need to seek eminent domain, to obtain Commission authorization before doing so. Id.

These consolidated proceedings involve Petitioners’ request for eminent domain authority with respect to two of the transmission lines authorized in Docket 06-0179: the 7.5 mile transmission line route from the Prairie State Facility west to AmerenIP’s existing Baldwin-Stallings 345 kV line, or the “Prairie West Line”, and the 30 mile transmission line route from the Baldwin Power Plant Switchyard west to AmerenUE’s switchyard at the Rush Island Power Plant, or the “Baldwin Rush Line”.

III. STATUTORY AUTHORITY

Section 8-509 of the Act governs the grant of eminent domain authority by the Commission. Section 8-509 provides, in pertinent part:

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.

IV. POSITION OF THE PARTIES

A. Position of Petitioners

1. Background

Petitioners explained that the Prairie West Line crosses 35 parcels of land. Petitioners have acquired, by negotiation, easements from most landowners. The easements acquired cover 31 parcels of land. Petitioners are now seeking eminent

domain authority to acquire necessary land rights with respect to the remaining four parcels, owned by two landowners (the "PW Unsigned Parcels"). The PW Unsigned Parcels are primarily parcels of agricultural land, ranging from 40 to 80 acres in size. Petitioners are seeking rights of way approximately 150 ft. in width across the PW Unsigned Parcels for the Prairie West Line, as well as construction easements where necessary.

Petitioners' witness Ms. Dencker explained that the design of the Prairie West Line has been completed. Right-of-way clearing started October 1, 2008 and will continue through April 1, 2009 (right of way clearing must take place in fall and winter months to avoid potential impacts on Indiana bat habitat). Foundation construction also started on October 1, 2008 in areas where tree clearing is not required. Line construction (placement of towers and actual transmission lines) started December 29, 2008. The target completion date for the Prairie West Line is November 20, 2009.

Ms. Dencker stated that if Petitioners are unable to acquire the needed easements for the Prairie West Line, the construction schedule will be delayed. Such a delay could have substantial implications for the successful completion of the Prairie West Line, as well as the completion of the entire Project.

Petitioners also explained that the Baldwin Rush Line crosses 116 parcels of land. Petitioners have acquired, by negotiation, easements covering 49 parcels of land. Petitioners are seeking eminent domain authority to acquire necessary land rights with respect to the 38 remaining parcels (the "BR Unsigned Parcels," together with the "PW Unsigned Parcels," the "Unsigned Parcels"), which are primarily parcels of agricultural and forested land of various sizes. Petitioners are seeking rights of way 150 ft. in width across the BR Unsigned Parcels for the Baldwin Rush Line, as well as construction easements where necessary.

Petitioners' witness Ms. Dencker explained that the design of the Baldwin Rush Line has been completed. Right-of-way clearing started on January 5, 2009 and will continue through March 31, 2009. Foundation construction is also scheduled to start on February 17, 2009 in areas where tree clearing is not required. Line construction for the Baldwin Rush Line (placement of towers and actual transmission lines) is scheduled to start on June 1, 2009. The target completion date for the Baldwin Rush Line is October 1, 2010.

As Petitioners witness Ms. Dencker explained, if Petitioners are unable to acquire the needed easements, the construction schedule will be delayed. Such a delay could have substantial implications for the successful completion of the Baldwin Rush Line, as well as the completion of the entire transmission line Project approved in Docket No. 06-0179. Delay in completing the transmission line would lead to delay in start-up and testing of the generation units of the Prairie State generating plant, which would ultimately lead to delay in full commercial operation of the plant.

2. The Standard of Approval for a Commission Grant of Eminent Domain Authority Pursuant to Section 8-509 of the Act

In their briefs, Petitioners set forth the standard for Commission review of a petition for eminent domain authority. Petitioners explained Commission approval is required before a utility seeks to condemn. Illinois Bell Tel. Co. v. Lewis, 117 Ill. App. 3d 72 (4th Dist. 1983). Petitioners stated that Section 8-509 of the Act governs the grant of eminent domain authority by the Commission, and to obtain Commission approval to exercise eminent domain authority under Section 8-509, Petitioners must show: (i) that they have received a Section 8-503 order authorizing construction of a project; and (ii) that eminent domain is necessary to complete the authorized construction. This “necessary” showing requires the utility to show that they have negotiated in good faith with the affected property owners to acquire the necessary land rights. Petitioners explained that the Commission’s focus in reviewing requests for eminent domain authority is on the nature and extent of negotiations with landowners:

In order to arrive at a determination that the authority to seek the entry of a condemnation order is appropriately granted, the Commission generally looks to the following: the continued need for the Project under consideration, including least cost considerations; the number and nature of contacts between the entity seeking the authority and those whose property will be encumbered; the basis for any monetary or other offers made; and the likelihood that further negotiations would prove useful in arriving at negotiated settlements.

Central Ill. Pub. Serv. Co., Docket 95-0484 (July 17, 1996), p. 13.

Section 8-509 applies to “alterations, additions, extensions or improvements ordered or authorized under Section 8-503,” thus requiring that a utility receive a Section 8-503 Order (as Petitioners did in Docket 06-0179) in order to obtain eminent domain. Petitioners pointed out, however, that 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, in addition to showing that “alterations, additions, extensions or improvements” have been authorized under Section 8-503, a utility seeking eminent domain authority must show that eminent domain is “necessary for the construction” of such alterations, additions, extensions or improvements. In other words, the inquiry under Section 8-509 is two-part: a utility must receive a Section 8-503 order for construction of facilities and the utility must show that eminent domain is “necessary” for the construction. Even with a Section 8-503 order in hand, Petitioners explained, a utility 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 (finding that the requirements for a Section 8-503 order had been met and stating that “[i]f Petitioners later determine there is a need to seek eminent domain, they will need to obtain Commission authorization before doing so”). The exercise of eminent domain can

therefore not occur until a utility expressly requests and receives Commission approval pursuant to Section 8-509.

Thus, Petitioners argued, contrary to Staff's arguments in the Motions to Strike, eminent domain is properly considered under Section 8-509, not Section 8-503. Section 8-503 does not mention "eminent domain"; instead, eminent domain authority is governed by Section 8-509 of the act. 220 ILCS 5/8-509; see Lakehead Pipeline Co. v. Illinois Commerce Comm'n, 296 Ill. App. 3d 942 (3d Dist. 1998) (stating eminent domain is authorized by Section 8-509 of the Act); St. Louis Pipeline Corp., Docket 02-0664, Final Order, pp. 15-16 ("pursuant to Section 8-509 of the Act, Petitioner is authorized to exercise eminent domain to obtain a permanent three feet wide nonexclusive easement..."). Moreover, Petitioners stated, the Commission has confirmed that the eminent domain inquiry under Section 8-509 is separate and distinct from the inquiry under Section 8-503. See Central Ill. Pub. Serv. Co., Docket 90-0206 (reviewing request for authority under Section 8-509 separately from request under Section 8-503); see also St. Louis Pipeline Corp., Docket 02-0664, Interim Order, p. 8 (stating that request for authorization to construct a pipeline pursuant to Section 8-503 of the Act was pending, and separately, "in case the property claimed by MESD is in fact private property, Petitioner's request for authority to take property pursuant to Section 8-509 must still be addressed").

Petitioners also explained that the question of eminent domain is separate from the inquiry into whether a Certificate should be granted under Section 8-406 of the Act, 220 ILCS 5/8-406, or whether a Section 8-503 order should be granted. The Commission has recognized that the inquiry under Section 8-503 has more in common with the inquiry under Section 8-406. See Quantum Pipeline Co., Docket 96-0001, 1997 Ill. PUC LEXIS 873, *91 (December 17, 1997) ("the practice of the Commission in judging applications under Section 8-503 has been to examine the Project primarily in terms of its value to the public, in a manner akin to judging requests for certification under the 'public convenience and necessity' standard found in Section 8-406 of the Act.") The type of evidence required to support a Section 8-406 Certificate is similar to the type of evidence needed to obtain a Section 8-503 order, while the evidence needed to support a grant of eminent domain authority is quite different. For practical reasons, Petitioners argue, it may make sense for a utility (as is the case with Petitioners here) to seek a Certificate first, and then seek eminent domain later. For example, the utility will not know what route the transmission line will take until a route is approved by the Commission in a Certificate proceeding. If there are alternative route proposals (as there were in Docket 06-0179), the utility will not know where to seek eminent domain until the route is approved. Thus, it would make sense to wait to seek eminent domain until a route is identified and negotiations undertaken with landowners, as the eminent domain proceeding will then be more narrowly focused on just the parcels where eminent domain is needed.

Petitioners also pointed out that the Commission's requirement that a utility show the continuing need for a project and good-faith negotiations to obtain eminent domain authority is long-standing. See Central Ill. Pub. Serv. Co., Docket 88-0342 (April 18, 1990) (reviewing necessity of Project and negotiation efforts by utility in granting

eminent-domain authority); Central Ill. Pub. Serv. Co., Docket 90-0022 (October 3, 1990), p. 10, 23 (granting utility eminent-domain power where there was a “continuing need” for the Project, and the utility had made “diligent effort to acquire right-of-way through negotiations with land-owners”); Central Ill. Pub. Serv. Co., Docket 90-0206 (January 9, 1991) (same); Central Ill. Pub. Serv. Co., Docket 90-0427 (April 3, 1991) (granting eminent-domain authority on the basis of Project need and unsuccessful outcome of diligent negotiation efforts by utility); Mt. Carmel Pub. Util. Co., Docket 91-0113 (May 16, 1991) (granting utility eminent-domain power where there was a need for the Project and the utility had made diligent efforts to acquire right-of-way through negotiations); Illinois Power Co., Docket 92-0306 (December 16, 1992) (reviewing Project necessity and utility’s efforts to negotiate land rights before granting an 8-509 order); Northern Ill. Gas Co., Docket 94-0029 (June 8, 1994) (granting eminent-domain authority where utility could not secure land rights for necessary Project despite good-faith negotiations); Commonwealth Edison Co., Docket 96-0410 (May 6, 1998) (finding that eminent-domain authority was necessary where good-faith negotiations had not sufficed to provide land rights for necessary Project); TransCanada Keystone Pipeline, Docket 06-0458 (April 4, 2007) (evaluating necessity of Project and good-faith nature of negotiations in granting eminent-domain authority); Enbridge Energy Partners, L.P., Docket 06-0470 (April 4, 2007) (concluding that eminent-domain grant was warranted where applicant had negotiated in good faith to acquire easements for a necessary Project); Commonwealth Edison Co., Docket 07-0310 (October 8, 2008) (granting eminent-domain power where Project was necessary and utility had diligently negotiated to acquire necessary easements).

In the Motions to Strike, Staff argued that “a proceeding to apply for eminent domain authority at the Commission would be limited to making a determination as to whether the Commission has entered an Order under Section 8-503 of the Act.” Staff’s position is that the Section 8-503 order granted by the Commission to Petitioners in Docket 06-0179, by itself, amounts to a grant of eminent domain authority, and that no further evidence is needed. Petitioners pointed out, however, that this interpretation was inconsistent with the language of Section 8-509 and the Commission’s precedent. Petitioners also pointed out that Staff’s arguments in the Motions to Strike were rejected by the ALJ, and, in Docket 08-0291, by the Commission.

Staff also appears to believe that review of a utility’s attempts to acquire land rights properly belongs in a Section 8-503 proceeding. As discussed above, however, Section 8-509 of the Act governs the grant of eminent domain authority. The plain language of Section 8-509 clearly requires that the Commission consider more than whether an order has been granted under Section 8-503. Longstanding Commission precedent sets forth the required showing to receive a grant of eminent domain authority, namely that the utility show it has engaged in good faith negotiations with landowners. Thus, Petitioners argued, Staff’s position regarding Sections 8-503 and 8-509 was incorrect.

3. Petitioners' Evidence that Eminent Domain Authority Should Be Granted for the Unsigned Parcels

Petitioners stated that they have met the standard for the grant of eminent domain authority discussed above. After numerous contacts with landowners, Petitioners have made fair and reasonable offers of compensation. All along, Petitioners have engaged in good-faith negotiations. Further, none of the parties to this action have objected to Petitioners' request for eminent domain.

Petitioners pointed out that, in the evidence filed in this proceeding, no party has objected to Petitioners being granted the eminent domain authority they have requested. Staff filed identical affidavits in both dockets, recommending that the Commission "grant Petitioners eminent domain authority" for the Baldwin Rush and Prairie West lines, respectively. Similarly, Dynegy, intervenors in Docket 08-0449, presented no objection to the grant of eminent-domain authority to Petitioners. Therefore, the question of whether Petitioners should receive eminent domain authority is not contested.

Although no party contests the conclusion that Petitioners should be granted eminent domain authority, Petitioners nevertheless offered substantial evidence that they contend support the conclusion, under Section 8-509 of the Act and established Commission precedent, that the Commission should grant eminent domain authority to the Petitioners for the Unsigned Parcels.

(a) Contacts With Landowners

Petitioners explained that, prior to Petitioners' filing for a Certificate in Docket No. 06-0179, landowners along the Baldwin Rush and Prairie West Lines were invited to an informational workshop to view and discuss the proposed line route, the need for the transmission line, the proposed facilities and the area and alternatives considered by Petitioners in defining the proposed routes. The workshop was for informational purposes only and no easement negotiations were permitted.

Next, landowners were sent a letter and "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights of Way by Illinois Utilities" at least fourteen (14) days prior to any contact by Petitioners' representatives for the purpose of seeking right of way, in compliance with the requirements of 83 Ill. Administrative Code Part 300. No contact with these owners was initiated by Petitioners for at least fourteen subsequent days.¹

After the fourteen-day notice period, Petitioners contacted landowners along the Baldwin Rush and Prairie West Lines, in person if possible, and discussed the Project in full detail, informing them of the reason for the contacts and the purpose of the Project. Compensation was offered and the basis of that compensation explained. Petitioners or its representatives were available for discussion and negotiations as required by each

¹ Landowners were also sent official notice of the Docket No. 06-0179 proceeding by the Commission.

landowner. As Petitioners witness Mr. Trelz explained, each landowner on the Baldwin Rush and Prairie West Lines has been contacted at least 14 times, by letter, phone and in person. Thus, Petitioners' contacts with landowners have been extensive.

(b) Offers of Compensation

Petitioners witness Mr. Trelz testified that the initial offer for the right-of-way easement right over each property was 75% of the appraised fee simple value of each parcel, with an extra 10% for the option to purchase the land in the future. In response to the concerns of the owners of the Unsigned Parcels, Petitioners hired third-party local appraisers to re-value those parcels, and then revised the offers of compensation. In those instances where the appraised property values were higher than the initial offers, Ameren increased the easement compensation offers to reflect the amount of the appraiser's opinion of value for the easement acquisition. In those instances where the appraised property values were lower than the initial offers, Ameren did not reduce its offers to reflect the lower values. Instead, the offers were increased to reflect compensation levels being offered to other landowners.

As Petitioners' witness Dr. Pflaum explained, Ameren's method of determining initial offers of compensation is reasonable because it recognizes that Ameren is obtaining an easement, not the full fee value of the land. The 0.75 factor represents recognition of the fact that the rights conveyed are easement rights for a specific purpose (the transmission lines) and does not represent the full fee value of the easement land. The landowner retains all other property rights. As discussed above, Ameren has offered more than 75% of fee value of the easement areas for easement rights. As Dr. Pflaum further explained, the fair market value of an easement would be 25-50% of fee value for the underlying land, because under an easement the landowner retains all other rights to the land. Since almost all of the parcels at issue here are agricultural land and the effect of the line on the ability to farm is *de minimis*, the price paid exceeds any reasonable measure of the economic harm, which is the measure of damage under Illinois law. Ameren's high offers of compensation are essentially an incentive to landowners to resolve the easement acquisition process through negotiations.

Mr. Trelz testified that the offers of compensation that have been accepted by landowners are similar to the offers that have been rejected by the owners of the Unsigned Parcels. Given the numerous contacts with the landowners of the Unsigned Parcels, and their refusal to accept fair and reasonable offers of compensation, there is no reason to believe that further negotiation will be fruitful. Therefore, eminent domain is necessary to acquire the Unsigned Parcels.

(c) Good-Faith Negotiations With Landowners

Petitioners retained professional, experienced land agents, who met repeatedly with landowners. As Petitioners' expert witness Dr. Pflaum explained, Petitioners' offers are reasonable, and in some cases well above the expected reduction in use-value of these properties post-Project. Petitioners retained local counsel to negotiate with

landowners' counsel, and responded promptly to landowner requests regarding resurvey, access to the parcels and movement of poles, and landowners' counter-offers. Where requested, Dr. Pflaum testified, Petitioners revised the text of the easement to soothe landowners' concerns regarding the breadth of the right being granted. As Dr. Pflaum concluded: (1) Ameren has negotiated for rights-of-way across the Unsigned Parcels in good faith, (2) Ameren can not reasonably expect to acquire rights-of-way for the Unsigned Parcels through negotiation, and (3) the Commission should authorize the exercise of eminent domain for the Unsigned Parcels. Accordingly, Petitioners believe they have conducted negotiations in good faith, and made reasonable attempts to gain the necessary easement rights. Petitioners have therefore demonstrated that they should receive eminent domain authority pursuant to Section 8-509 of the Act.

(d) Concern Over "Hold-Out" Behavior By Landowners

Petitioners' witness Dr. Pflaum also explained the "holdout" problem. A holdout is a seller who tries to extract some of the profit of the buyer through a high asking price. In many instances, Dr. Pflaum testified, a buyer could simply go elsewhere, but in circumstances where a defined area of land is required for a project (such as a network of parcels for an electric transmission line, gas pipeline, roadway, etc.), a holdout is a problem. A landowner realizes that he has the power to block a highly valued project and attempts to extract from that project all value above cost by exercising his locational monopoly. Holdouts are landowners who individually or as a group refuse reasonable offers for easements and make extravagant monetary and other demands for the use of their property. Hold-outs can result in failure to complete a utility transmission route (because of the limits to the path that a transmission line can take), increased expense (because even a new route away from the original hold-outs can result in new hold-outs), and crucially, power supply disruptions for customers. As Dr. Pflaum explained, the solution to the holdout concern is eminent domain: Where the holdouts are blocking a public necessity eminent domain is exercised to give them the incentive to negotiate reasonably or, in the alternative, to have the value of the property interest set by a court of law.

As Dr. Pflaum stated, owners of the Unsigned Parcels are exhibiting hold-out behavior. Certain landowners have been unresponsive, have made unreasonable demands regarding access to their property for surveys, and have in cases asked for disproportionately large sums of compensation, as high as three times the appraised value of their entire property. To avoid the disadvantages arising from such hold-out behavior, Dr. Pflaum concluded the appropriate response is grant petitioners eminent domain over these parcels. Authorizing eminent domain gives these landowners an incentive to bargain in good faith, because of the possibility that the circuit court condemnation action may result in a lower award than the reasonable value being offered by Petitioners. Thus, the presence of the holdout concern represents another reason why, according to Petitioners, the grant of eminent domain authority is appropriate.

B. Position of Staff

Commission Staff did not file testimony in this proceeding, but instead filed the Affidavit of Ronald Linkenback, which concluded by recommending that the Commission grant Petitioners eminent domain authority. In both Dockets 08-0291 and 08-0449, however, Staff moved to strike substantially all of Petitioners' testimony, on the grounds that the only showing required by the Petitioners in order to obtain eminent domain authority was that a Section 8-503 order had been obtained in Docket 06-0179. This reasoning was rejected, and the motions to strike were denied, by the ALJ. The ALJ explained that "Commission orders in proceedings seeking eminent domain-related authorizations have consistently contained analysis and findings as to whether petitioners had engaged in diligent, good faith negotiation efforts with landowners or had made reasonable attempts to acquire the necessary land rights through negotiations with landowners," and such findings are a "prerequisite to obtaining eminent domain-related relief." (See Docket 08-0449, February 6, 2009 ALJ Order, p. 2.) The ALJ concluded that, because these necessary determinations had not been made in Docket 06-0179, Petitioners' evidence was properly admissible.

C. Position of Dynegy in Docket 08-0449

In Docket 08-0449, Dynegy filed the testimony of Mr. Roethemeyer. Mr. Roethemeyer explained Petitioners' proposed Baldwin-Rush Line will, in part, cross some of the land at Dynegy's Baldwin Energy Complex ("BEC"). Dynegy actively participated in Docket No. 06-0179, relating to the same line. Thereafter, Mr. Roethemeyer testified, Petitioners and DMG negotiated two easements and related documents, one for the line itself and the other for the expansion of the switchyard at the BEC. Mr. Roethemeyer stated that prior to the filing of Docket 08-0449, Petitioners and DMG reached agreement on and executed the documents related to the switchyard expansion. After the filing of Docket 08-0449, Petitioners and Dynegy completed negotiations and executed an easement and related documents for the Baldwin Rush Line easement at issue in this proceeding. Therefore, Mr. Roethemeyer testified, he was not aware of any remaining reasons that Petitioners would need to employ eminent powers for the transmission line with respect to the land owned by Dynegy. Petitioners agreed with this conclusion.

V. COMMISSION CONCLUSION

In this consolidated proceeding, Petitioners are seeking authority under Section 8-509 of Act to exercise the power of eminent domain with respect to necessary land rights across certain parcels of land required for the construction of two electric transmission lines, the Baldwin Rush Line and the Prairie West Line. A Certificate and an order authorizing the construction of the transmission lines under Section 8-503 of the Act were issued in Docket 06-0179. The Commission noted in Docket 06-0179, with respect to eminent domain, that "[s]hould Petitioners subsequently determine there is a need to condemn certain property in order to construct the Project, they will seek Commission approval to exercise eminent domain authority in a separate proceeding." Docket 06-0179, Final Order, p. 40. The Commission then required Petitioner, if there

was a need to seek eminent domain, to obtain Commission authorization before doing so. Id. In accordance with these instructions, Petitioners are now seeking Commission authority to exercise eminent domain over the Unsigned Parcels.

As Petitioners explained, to obtain Commission approval to exercise eminent domain authority under Section 8-509, Petitioners must show: (i) that they have received a Section 8-503 order authorizing construction of a project; and (ii) that eminent domain is necessary to complete the authorized construction. This “necessary” showing requires the utility to show that they have engaged in diligent, good faith negotiation efforts with landowners or had made reasonable attempts to acquire the necessary land rights through negotiations with landowners. In determining whether to grant eminent domain authority, the Commission generally looks at the following factors: the continued need for a project; the number and nature of contacts between the entity seeking the authority and those whose property will be encumbered; the reasonableness of offers of compensation; and the likelihood that further negotiations would prove useful in arriving at negotiated settlements.

A determination addressing these factors has generally been treated as a prerequisite to obtaining eminent domain authority from the Commission. With regard to the transmission lines in this proceeding, no such determinations were made in the Order in Docket 06-0179. Therefore, Petitioners have, as required by the Docket 06-0179 Order, properly presented evidence regarding good faith negotiation efforts with landowners in this proceeding.

In support of their request, Petitioners filed the direct testimony of three witnesses, which discussed the continuing need for the transmission lines, the status of the construction of the lines, and Petitioners’ good faith efforts to acquire property from affected landowners by negotiation, including the nature and extent of contacts with landowners and the reasonableness of Petitioners’ offers of compensation. Petitioners evidence in this case demonstrates that the criteria for a grant of eminent domain authority have been met. Moreover, no party disputes the conclusion that eminent domain should be granted. Therefore, Petitioners should be granted eminent domain authority as they have requested.

With respect to Staff’s concerns about the showing needed to obtain eminent domain authority, Petitions filed under Sections 8-406 and 8-503 do not contain an implicit request for eminent domain authority. Any petitioner seeking eminent domain authority must specifically request such relief under Section 8-509 in its petition. Although relief granted under Sections 8-406 and 8-503 may eventually result in a grant of eminent domain authority under Section 8-509, without a specific request under Section 8-509, eminent domain authority cannot be granted. In addition, granting relief under Sections 8-406 and 8-503 does not render a later request under Section 8-509 a mere formality. While it is true that authority under Section 8-503 is specifically required before eminent domain authority can be granted under Section 8-509, as discussed above, a showing must also be made that the utility has engaged in good faith negotiation efforts with landowners before it will be allowed to exercise eminent domain authority in circuit court. Moreover, a petitioner need not seek relief under Sections 8-

406, 8-503, and 8-509 simultaneously. Instead, relief may be sought under each Section individually as circumstances dictate. Therefore, Petitioners' approach, in seeking Section 8-406 authority in Docket 06-0179 and then a grant of eminent domain authority under Section 8-509 in a later proceeding is appropriate.

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) AITC is a Illinois corporation and a public utility within the meaning of Section 3-105 of the Act that will fund, construct and operate the Project in conjunction with AmerenIP;
- (3) the Commission has jurisdiction over AmerenIP and AITC and the subject matter herein;
- (4) 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;
- (5) AmerenIP and AITC are constructing new electric transmission lines, including the Prairie West Line and Baldwin Rush Line, together with related facilities, to secure adequate, efficient, and reliable service in LaSalle County, Illinois;
- (6) the Commission in Docket 06-0179: (i) granted Petitioners a Certificate for the new electric transmission lines; and (ii) authorized Petitioners to construct the new electric transmission lines pursuant to Section 8-503 of the Act;
- (7) Petitioners now seek authority under Section 8-509 of the Act to exercise eminent domain to acquire all necessary land rights across the Unsigned Parcels (as identified in Ameren Exhibits 4.0-PW (Rev.), p. 2 & 4.0-BR (Rev.), pp. 2-3) on the Prairie West Line and Baldwin Rush Line, including rights of way approximately 150 ft. in width for the lines, as well as construction easements where necessary;
- (8) Petitioners have demonstrated those elements necessary to be granted eminent domain authority with respect to the Unsigned Parcels, including the receipt of a Section 8-503 order and good faith negotiations with affected landowners; and

- (9) A grant of eminent domain authority under Section 8-509 of the Act to acquire all necessary land rights across the Unsigned Parcels is necessary for the construction of the Prairie West Line and Baldwin Rush Line, is reasonable and in the public interest, and should be approved.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Illinois Power Company d/b/a AmerenIP's and Ameren Illinois Transmission Company are hereby granted authority to exercise eminent domain to acquire all necessary land rights across the Unsigned Parcels on the Prairie West Line and Baldwin Rush Line, including rights of way approximately 150 ft. in width for the lines, as well as construction easements where necessary.

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: February 27, 2009

Respectfully submitted,

ILLINOIS POWER COMPANY, d/b/a
PetitionersIP, and PETITIONERS ILLINOIS
TRANSMISSION COMPANY

By: /s/ Albert D. Sturtevant
Albert D. Sturtevant
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