

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CenterPoint Energy – Illinois Gas	:	
Transmission Company	:	09-0054
	:	
Petition for a Certificate Authorizing and	:	
Directing Construction, Abandonment,	:	
and Operation of a Natural Gas Pipeline	:	
and Granting Authority to Exercise	:	
Eminent Domain.	:	

**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice, 83 Ill. Adm. Code 200.800, respectfully submits its Reply Brief in the above-captioned proceeding. On August 13, 2009, Initial Briefs were filed in this proceeding by CenterPoint Energy – Illinois Gas Transmission Company (“IGTC” or the “Company”), Julie Massey (“Massey”), Russell A. and Shirley J. Dietz (“Dietz”), Clifford and Mildred Becker and Dennis and Darrell Becker (“Becker”), Daniel and Thomas Ketterer (“Ketterer”), Guy and Bridget Jackson (“Jackson”), and Staff. Staff herein replies to the Initial Briefs (“IB”) filed by the parties.

I. THE COMMISSION SHOULD ORDER IGTC TO ACCOMMODATE EVERY LANDOWNER'S REQUEST REGARDING REMOVAL OF THE EXISTING PIPELINE

IGTC argues that Staff's recommendation that the Commission order IGTC to accommodate every landowner's request regarding the removal of the existing pipeline is "illegal" and "unworkable." (IGTC IB, pp. 5-8) Staff disagrees with the Company's arguments.

Staff believes that the Commission has the requisite authority pursuant to Section 8-503 of the Illinois Public Utilities Act (the "Act"), 220 ILCS 5/8-503, to order IGTC to remove the abandoned pipeline, or abandon the line in place, in accordance with the wishes of the individual landowners. As such, Staff's recommendation to the Commission is not "illegal." Furthermore, Staff believes that its recommendation is technically feasible. As such, Staff's recommendation is not "unworkable."

A. Staff's Recommendation is Legal

IGTC argues that the Commission lacks the jurisdiction to impose or enforce a condition requiring IGTC to remove the abandoned pipeline in accordance with each landowner's wishes. (IGTC IB, pp. 5-6) However, IGTC has invoked Section 8-503 of the Act in its Second Amended Petition.¹ As part of its authority pursuant to Section 8-503 of the Act, the Commission has the authority to order "changes" in physical property. Section 8-503 of the Act provides, in relevant part, as follows:

¹ Section 8-503 of the Act is applicable to common carriers by pipeline, such as IGTC, pursuant to Section 15-101 of the Act, 220 ILCS 5/15-101.

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 or of any 2 or more public utilities 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 promote the development of an effectively competitive electricity market, 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... (Emphasis added)

In the instant proceeding, IGTC has in essence sought a Commission Order for the reconfiguration of its pipeline system, constructing 2.2 miles of new pipeline that will permit it to effectively abandon 55 miles of old oil pipeline that had been converted to use as a natural gas pipeline within the last 20 years.² In its Second Amended Petition and testimony, the Company has undertaken to work with landowners on whose property the old pipeline runs to either abandon the pipeline in place, or to remove the line, in accordance with the wishes of the individual landowners. (Second Amended Petition, p. 3; IGTC Exhibit 1, pp. 5, 9) Given the breadth of the quoted language from Section 8-503 of the Act, and given the undertakings of IGTC in its Second Amended Petition and testimony, it would not only be appropriate but also “legal” for the Commission to order all of the changes in the Company’s physical property at the same time – this would

² While Staff refers to IGTC’s “abandonment” of its existing pipeline, Staff in no way infers that IGTC is subject to Section 8-508 of the Act, 220 ILCS 5/8-508, regarding public utility abandonment of service, since Section 8-508 does not apply to common carriers by pipeline such as IGTC, and since IGTC will still be serving the same customers. (See Staff IB, pp. 7-8) For this reason, Staff disagrees with arguments regarding the Commission’s authority to grant permission to IGTC to abandon its existing pipeline. (Massey IB, pp. 5-6)

include removal (or not) of old pipe in accordance with landowner wishes and construction of the new pipeline segment.

B. Staff's Recommendation is Workable

IGTC also complains that Staff's recommendation is "overbroad, unworkable and could have unintended consequences," claiming that it needs to make a determination regarding removal of each segment of pipeline on a case-by-case basis pursuant to certain "factors." (IGTC IB, pp. 6-8) Staff, on the other hand, believes the Company's rationale is flawed.

Staff is concerned that while the Company claims it will consider landowner requests for the removal of the pipeline, only lip service will be paid to each landowner's request. The "factors" that IGTC will weigh against each landowner's request have been predetermined solely by IGTC. (*Id.*, pp. 6-7) The weighing and balancing of each factor against the landowner's request will be undertaken solely by IGTC. The final determination will be made solely by IGTC. As such, the landowners will be at a significant disadvantage in a process that is completely controlled by the Company.

Further, Staff finds it disingenuous of the Company to argue the possibility of damage to landowner property if various pipeline segments are to be removed. (*Id.*, p. 7) Staff believes that both removal of the pipeline and restoration of any damaged property are technically feasible.³ (Tr., July 23, 2009, p. 152) Moreover, Staff believes the Company's argument regarding concerns of other

³ While Staff witness Maple testified that a farmer could be worried about hitting the pipeline while plowing (ICC Staff Exhibit 1.0, p. 17), he in no way inferred that "[t]he pipeline is a liability and a danger due to its closeness to the soil surface." (Becker IB, p. 3)

agencies and archeological/environmental interests is a red herring. (IGTC IB, p. 8) As with the Company's concern regarding property damage, the outcome will largely depend on the extent of the personnel and financial resources IGTC is willing to commit to complete the proposed changes to its system.

II. THE COMMISSION LACKS THE REQUISITE AUTHORITY TO ORDER IGTC TO RETURN EASEMENTS TO LANDOWNERS

The landowners in the instant proceeding argue that the Commission has the authority to order IGTC to return their respective easements to them. (Massey IB, pp. 6-9; Dietz, pp. 6-10; Jackson, pp. 6-10; Becker, p. 4; Ketterer, p. 4) However, as Staff has previously explained, the Commission lacks the requisite authority to order IGTC to return the landowners' easements. (Staff IB, pp. 24-25)

Staff does not agree that Section 7-102 of the Act, 220 ILCS 5/7-102, provides the Commission with the authority to terminate and return the landowners' easements to them. (Massey IB, pp. 7-8) Article VII is not one of the provisions rendered applicable to a common carrier by pipeline, such as IGTC, under Section 15-101 of the Act. Accordingly, Klopf v. Illinois Commerce Commission, 54 Ill. App. 3d 491, 369 N.E.2d 906 (1977), filed pursuant to Section 27 of the Act (the precursor to Section 7-102), would not be applicable to the instant proceeding. (*Id.*, p. 8) Moreover, General American Realty Co. v. Greene, 107 Ill. App. 3d 1011, 1015, 438 N.E.2d 540 (1982), clearly held that the Commission lacked jurisdiction over a dispute between private parties

concerning the terms of an easement created pursuant to contract, and purported violations thereof. (*Id.*, pp. 8-9)

Further, several of the intervening landowners misquote Staff witness Maple regarding his testimony with respect to the return of their easements. Two interveners attribute Mr. Maple with the statement that it “is a reasonable request to ask for easements back if a pipeline is abandoned.” (Ketterer IB, p. 4; Becker IB, p. 4) However, this was not Mr. Maple’s testimony. In a discussion regarding Mrs. Massey’s testimony with respect to her conversation with IGTC land agent Dale Anderson, Mr. Maple opined that Mrs. Massey’s interpretation of what Mr. Anderson said to her appeared reasonable:

...Mrs. Massey apparently interpreted this to mean that the easement rights would be returned to her as a landowner. In my opinion, Mrs. Massey’s interpretation appears reasonable.

(ICC Staff Exhibit 3.0, p. 2)

Hence, the incorrect statement attributed to Staff witness Maple that appears in the Ketterer and Becker Initial Briefs should be disregarded by the Commission.

III. CONCLUSION

For the reasons set forth in its Initial Brief and this Reply Brief, Staff respectfully requests that its recommendations be approved and adopted by the Commission in the instant proceeding.

Respectfully submitted,

A handwritten signature in black ink that reads "Linda M. Buell". The signature is written in a cursive style with a large initial "L" and "B".

LINDA M. BUELL

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