

ILLINOIS COMMERCE COMMISSION

Illinois Power Company)
d/b/a AmerenIP)
and Ameren Illinois Transmission Company)
)
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 LaSalle County, Illinois.)

06-0706

ILLINOIS COMMERCE COMMISSION
CHIEF CLERKS OFFICE
SEP - 3 2009
RECEIVED

**SUGGESTION THAT THE ILLINOIS COMMERCE COMMISSION RE-OPEN
THIS CAUSE OF ACTION ON ITS OWN MOTION**

NOW COMES Skydive Chicago, Inc. (herein after referred to "Skydive"), Ottawa Airport, Inc., (herein after referred to as "the Airport"), and individuals known as Fox River Alliance, (hereinafter referred to as "Alliance) (Exhibit A), and Friends of the Fox River, (herein after referred to as "Friends"), by their attorneys, Fred M. Morelli, Jr., and respectfully suggest that the Illinois Commerce Commission consider reopening the matter of the location of the Ameren high voltage wire on its own motion. In support of this suggestion, they state as follows:

BACKGROUND

Ottawa Airport, Inc., first applied to the Federal Aviation Authority to build an airport at its present location and was open for business in 1998, with F.A.A. approval.

Skydive Chicago, Inc., moved its location from the old Ottawa Airport, on the West side of the City of Ottawa, to its new location, at the same time Ottawa Airport, Inc., opened.

The configuration of the Airport in relation to the Fox River is shown in Exhibit B. There are approximately 6,000 take offs and landings at the Airport each year, approximately 350 to 400 of which are unrelated to skydiving.

Skydive Chicago, Inc., puts out approximately 6,000 first jump students each year and puts out a total of approximately 60,000 skydives each year. The skydivers exit the aircraft in the vicinity of the Airport at approximately 13,000 feet. The exit point is dependant on the wind. Once out of the aircraft, the skydivers free fall until between 5,000 feet and 3,500 feet, at which point, the parachute is deployed. The exit point is sometimes on the east side of the River, particularly when the wind is from the east, the parachutists ride the wind towards the Airport and at the appropriate time and altitude, face the wind for a landing, just as an aircraft. (Modern sport parachutes operate like the wing of a fixed wing aircraft)

Both the Ottawa Airport and Skydive Chicago Inc., are major contributors to the local economy in the City of Ottawa.

Some of the individuals affected by the presently proposed route of the power line, received notice of the first meeting on the 6th day of April, 2006, attended said meeting and were advised by the representatives of Ameren that the only reason the River route was proposed was because it was necessary that three routes be proposed and that they need not worry; that the power line would never go up Champlain Street, or along the Fox River. (see a representative sampling of affidavits marked "Exhibits B-1, B-2, B-3, B-4, B-5, B-6")

Based upon and relying upon those representations being true, they took no further action.

The next time they were contacted by Ameren was by letter dated the 15th day of April, 2009, advising them that they would be contacted by Ameren to negotiate an easement across their property. By then it was too late to seek leave to intervene or contest the findings of the Administrative Law Judge.

Petitioners further state:

1. Ottawa Airport, Inc., is located in Dayton Township, approximately 700 feet from the presently proposed route of the Ameren power line.

2. Skydive Chicago, Inc., operates out of the Ottawa Airport.

3. Members of the Fox River Alliance are individuals who live in and around Dayton Township and who will be directly and indirectly affected by the power line if it follows its presently proposed route.

4. Friends of the Fox River is a conservation group dedicated to preserving the Fox River.

5. It appears from the decision that the primary reason for choosing the River route was because no one was present to object to that route.

6. If this cause of action is re-opened, Ottawa Airport Inc., will present the following evidence:

- a. Danger to General Aviation
- b. Failure to make appropriate filings with the Federal Aviation Authority.
- c. Danger of being put out of business.

7. If this cause of action is re-opened, Skydive Chicago, Inc., will present the following evidence:

- a. Danger to skydivers
- b. Potential disruption of electrical service
- c. Exposure to liability by Ameren

d. Danger of being put out of business with a major effect on the economy of Ottawa, Illinois.

e. Evidence will be introduced as to the disastrous and permanent effect the power line will have on the ecology of the Fox River along the proposed 9 mile route and below.

8. The Illinois Commerce Commission, on March 11, 2009, after 2 and ½ years of litigation in which no one along the presently proposed route participated, ruled in a 99 page opinion, 3 pages of which addressed a “stipulation” entered into between Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company, the Route 71 Resisters and the City of Ottawa, that it would approve the route along the Fox River.

9. The Petitioners and others who live along the presently approved route did not participate in the litigation because when they appeared at the initial informational meeting, they were told not to worry because under no circumstances would the route follow the presently approved route. (See attached Exhibit “B”)

10. The City of Ottawa has since reversed its position and no longer favors the route along the river (a copy of which has already been mailed to the I.C.C. by the City of Ottawa, unsigned copy is attached) (“Exhibit C”)

11. The Dayton Township government has passed a resolution, a copy of which is attached and marked as “Exhibit D”, opposing the route along the river.

12. Fred Morelli, Matthew Nelson, the Project Manager of Ottawa Airport, and Kirk Smith, a resident of the unincorporated Village of Dayton, met with Attorney, Fitzhenry, an in house counsel for Ameren, to discuss whether or not Ameren would change its position and join in suggesting the hearing be reopened. Ameren has not yet made a decision, but as of the filing of this Suggestion, has not declined.

13. If the Commission re-opens on its own motion; and, the Alliance, Skydive Chicago, Inc., and Ottawa Airport, Inc., are allowed to present evidence, the evidence they present will be as follows:

a. Matthew Nelson from Skydive Chicago will testify as to the number of skydives made at Skydive Chicago, approximately 60,000 a year, the number of jumpers who attend Skydive Chicago, where the landing areas are, See attached photo Exhibit "H") and approximately how many persons have landed in the area presently designated as the route of a 138,000 volt power line, within the last two years, approximately 6 persons per year. He will testify as to the likelihood of both Skydive Chicago and Ottawa Airport closing if the power lines are present.

b. An expert will testify as to the mechanics of skydiving, the flight, altitude, effects of the wind, the ability of people to land on the airport and what affects the ability or inability to do so and the inevitability that someone will land in the wires.

c. Robert Speers, a personal injury/wrongful death/Plaintiff's lawyer will testify as to the liability of Ameren when someone does, in fact, land in the power line.(See attached "Exhibit E")

d. Someone from the Ottawa Chamber of Commerce will testify as to the economic impact that Skydive Chicago, Inc., and the Ottawa Airport, Inc., have on the businesses in the City of Ottawa, restaurants, hotels, bars, gas stations, grocery stores, etc.

e. Testimony will be produced that Ameren plans to clear cut 150 feet of mature trees along the bank of the Fox River for 9 miles along the West bank of the Fox River.

f. An expert will testify on the effect that 9 miles of clear cutting will have on the American Bald Eagle, protected by the Bald Eagle and Golden Eagle Protection Act and the certainty of erosion and run off of herbicides into the Fox River. (See attached Exhibit "F")

g. On information and belief, Ameren has not yet filed the required Environmental Impact Statement with the United States Department of Fish and Wildlife or any other entity.

h. On information and belief, the only statement filed by Ameren with the Illinois Department of Natural Resources does not reflect a plan to route the power line along the Fox River, but reflects another route.

i. On information and belief, Ameren has not filed the required documents with the Federal Aviation Authority. (See attached F.A.A. requirements "Exhibit G")

14. The route along the Fox River will be more expensive, create potential for service interruptions and liability, thus additional expenses to be passed on to the consumer.

WHEREFORE, Fred M. Morelli, Jr., on behalf of their above mentioned clients, respectfully request the consideration of this Suggestion That The Illinois Commerce Commission Re-Open This Cause of Action On Its Own Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fred M. Morelli, Jr.', written over a horizontal line.

Law Offices of Fred M. Morelli, Jr.
403 W. Galena Blvd.
Aurora, IL 60507-1416
(630) 892-6665

Fred M. Morelli, Jr., #1957139

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

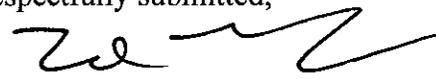
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lines in LaSalle County, Illinois.)	

NOTICE OF FILING

TO: See attached service list

Please take notice that on August 27, 2009, Fred M. Morelli, Jr., caused to be filed on behalf of Skydive Chicago, Inc., Ottawa Airport, Inc., and individuals of a group going by the name of Fox River Alliance, **SUGGESTION THAT THE ILLINOIS COMMERCE COMMISSION RE-OPEN THIS CAUSE OF ACTION ON ITS OWN MOTION**, in the above captioned preceding with Elizabeth A. Rolando, Chief Clerk of the Illinois Commerce Commission, via electronic mail.

Respectfully submitted,



Fred M. Morelli, Jr.

Certificate of Service

I, Fred M. Morelli, Jr., hereby certify that a copy of the foregoing **SUGGESTION THAT THE ILLINOIS COMMERCE COMMISSION RE-OPEN THIS CAUSE OF ACTION ON ITS OWN MOTION** was served on all parties on the Service List in Docket No. 06-0706, by regular U.S. Mail, duly addressed with postage fully paid, on August 27, 2009.



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403 W. Galena Blvd.
Aurora, IL 60507-1416
(630) 892-6665

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SERVICE LIST (Amended 5-21-09)

Elizabeth A. Rolando
Chief Clerk of the Illinois Commerce Commission
527 E. Capital Ave.
Springfield, IL 62701

John D. Albers
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

John L. Cantlin (*)
Atty. for Robert B. and Linda J. Dolder
John L. Cantlin and Associates
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Ottawa, IL 61350

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Atty. for Applicants
Jones Day
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Chicago, IL 60601-1692

E. M. Fulton Jr. (*)
Atty. for IMEA
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913 S. Sixth St.
Springfield, IL 62703

Anita L. Kopko (*)
Atty. for City of Ottawa
Pool Leigh & Kopko, P.C.
628 Columbus St., Ste. 208
Ottawa, IL 61350

Frederick J. Blue (*)
3168 E. 9th Rd.
Utica, IL 61373

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Ameren Services Company
PO Box 66149 (M/C 1310)
1901 Chouteau Ave.
St. Louis, MO 63166-6149

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Troy A. Fodor, P.C.
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Herbert J. Klein
Atty. for Village of North Utica
Law Office of Herbert J. Klein
925 Shooting Park Rd., Ste. A
Peru, IL 61354

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Margaret M. Kennedy Declaration of Trust
2050 Grape St.
Denver, CO 80207-3837

Ottawa Airport, Inc.
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Ottawa, IL 61350

Dana L. Kurtz
Kurtz Law Offices, LLC
414 South State Street
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C/O Matthew Nelson
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Atty. -Illinois 71 Resistor:
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Atty. for City of LaSalle
Anthony C. Raccuglia & Associates, P.C.
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Peru, IL 61354

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Successor Trustee of LeRoy J. Nagle
Declaration of Trust - Nagle & Higgins, P.C.
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Naperville, IL 60540

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Naperville, IL 60540

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St. Louis, MO 63166-6149

Robert Trumbo (*)
President
Illinois 71 Resistors
PO Box 855
Ottawa, IL 61350

Janis Von Qualen
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Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701

Walter J. Zukowski, Atty. for LaSalle-Peru
Township High School Dist. # 120
PO Box 484
817 Peoria St.
Peru, IL 61354

Ericka Dominick
Legal Dept.
Ameren Services Co.
(m/c 13120)
1901 Chouteau Ave.
St. Louis, MO 63103

Fox River Alliance			
Signature	Name	Address	Phone
Rebecca Marsh	Rebecca Marsh	3118 E 1961 Rd	433 5982
Ann Walleck	Ann Walleck	3116 E. 1961 st Rd.	433-3365
Les Walleck	Les Walleck	" "	" "
Betsy Smith	Betsy Smith	3120 E. 1961 Rd	252-0467
Marv Wawerski	MARV WAWERSKI	1961 RD	815 345 4373
Michael John Obas	Michael John Obas	3190 E. 1969 th Rd.	815 993-2319
Jeff + Dawn Brest	Jeff + Dawn Brest	3186 E. 1989 th Rd	815-434-0209
ROGER WILSON	ROGER WILSON	3108 E. 1961 st RD	815-433-4303
Joe + Jacki Valdez	Joe + Jacki Valdez	3040 E. 1929 th RD	815-433-2941
Dominic Datti	DOMINIC DATTI	3058 E 1929 th RD	815 433-0188
Carol Miller	CAROL MILLER	1134 N 36 th RD	815 433-0188
DAWN + KYLE PROVANCE	Dawn Provance	3110 E 1961 st Rd Ottawa	815 434 1742
Sean Porter	Sean Porter	1938 E. 3051 Rd. Ottawa	815-993-4742
Kristen Porter	Kristen Porter	" "	" "
Kaz Kubinski	Kazimierz Kubinski	3105 E 1951 Rd.	815-993-0584
Eric Osbourne	Eric Osbourne	1940 E 3051 Rd	815-712-9099
Kyle Close	Kyle Close	3122 E. 1961 st Rd.	815-431-9605
Barb Close	Barb Close	3122 E 1961 st Rd	431-9605

Exhibit "A" p.2

Exhibit "A" p.2

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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lines in LaSalle County, Illinois.)

Affidavit

Now Comes DANA PROVANCE, having been duly sworn
and under oath state as follows:

1. My name is DANA PROVANCE
2. I live at 3160 E 1961 ST RD
3. I received notice of a meeting on the proposed power line by Ameren to be held on the _____ day of April, 2006.
4. I attended that meeting and while at that meeting, I was advised by Ameren, a representative of Ameren, that because of my location, the route along the Fox River, was the least desirable route and would not be the route taken.
5. In reliance on those statements, I took no further action.
6. I only learned of the decision of the Administrative Law Judge for the Illinois Commerce Commission, in April of 2009, after the time to take any official action had passed.
7. This affidavit is made under oath and under penalty of perjury.

Dana Provance

I, Dana Provance Jr., being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me
this 10 day of July, 2009. DANA PROVANCE

[Signature]
Notary Public
"OFFICIAL SEAL"
Fred M. Morelli, Jr.
Notary Public, State of Illinois
My Commission Exp. 07/27/2009

Affidavit

Now Comes Kathryn L Troccoli, having been duly sworn and under oath state as follows:

1. My name is Kathryn L. Troccoli
2. On or about the 6th day of April, I received a written communication advising me of an "informational" meeting regarding the installation of a 138,000 volt power line from Ottawa to Wedron.
3. I attended that meeting.
4. While at that meeting, I was advised by a representative from Ameren that I had nothing to worry about because the power line was not going to take the route along the Fox River.
5. I made sure I had heard correctly and was told again that the only reason the route along the Fox River was mentioned was because the Illinois Commerce Commission required that three routes be submitted.
6. In reliance on the statements of the representative of Ameren, I took no further action and attended no further meetings.
7. Had I known that the route along the Fox River was even in consideration, I would have taken an active role in contesting that route.
8. My lack of action was due entirely to the representations made by the representative of Ameren at that very first meeting.

Further affiant sayeth not.

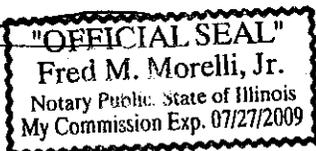
Kathryn L Troccoli

I, Kathryn L Troccoli, being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me this 10 day of July 2009.

Kathryn L Troccoli

Notary Public



Affidavit of Ameren Rep's statement

STATE OF ILLINOIS
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Affidavit

Now Comes Pierce Provance, having been duly sworn

and under oath state as follows:

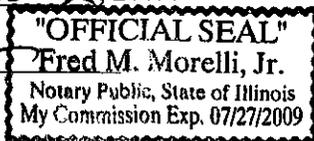
1. My name is Pierce Provance
2. I live at 3110 E 1961st Rd
3. I received notice of a meeting on the proposed power line by Ameren to be held on the _____ day of April, 2006.
4. I attended that meeting and while at that meeting, I was advised by Ameren, a representative of Ameren, that because of my location, the route along the Fox River, was the least desirable route and would not be the route taken.
5. In reliance on those statements, I took no further action.
6. I only learned of the decision of the Administrative Law Judge for the Illinois Commerce Commission, in April of 2009, after the time to take any official action had passed.
7. This affidavit is made under oath and under penalty of perjury.

Pierce Provance

I, Pierce Provance, Jr., being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me
this 10 day of July, 2009.

[Signature]
Notary Public



Pierce Provance

STATE OF ILLINOIS
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Affidavit

Now Comes Kirk Smith, having been duly sworn

and under oath state as follows:

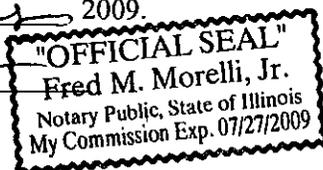
1. My name is Kirk Smith
2. I live at 3120 E 1961ST Rd OTTAWA, IL 61350
3. I received notice of a meeting on the proposed power line by Ameren to be held on the _____ day of _____, 2006.
4. I attended that meeting and while at that meeting, I was advised by THE PROJECT ENGINEERS, a representative of Ameren, that because of my location, the route along the Fox River, was the least desirable route and would not be the route taken.
5. In reliance on those statements, I took no further action.
6. I only learned of the decision of the Administrative Law Judge for the Illinois Commerce Commission, in April of 2009, after the time to take any official action had passed.
7. This affidavit is made under oath and under penalty of perjury.

Fred Smith

I, Kirk Smith, ^{KS} being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me
this 10 day of July 2009.

[Signature]
Notary Public



STATE OF ILLINOIS
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Affidavit

Now Comes _____, having been duly sworn
and under oath state as follows:

1. My name is Marelea Dummke
2. I live at 1911 Champlain St., Ottawa, IL 61350
3. I received notice of a meeting on the proposed power line by Ameren to be held on the _____ day of _____, 200__.
4. I attended that meeting and while at that meeting, I was advised by _____, a representative of Ameren, that because of my location, the route along the Fox River, was the least desirable route and would not be the route taken.
5. In reliance on those statements, I took no further action.
6. I only learned of the decision of the Administrative Law Judge for the Illinois Commerce Commission, in April of 2009, after the time to take any official action had passed.
7. This affidavit is made under oath and under penalty of perjury.

Marelea Dummke

I, _____, Jr., being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

STATE OF ILLINOIS
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Affidavit

Now Comes Ralph Chapman, having been duly sworn and under oath state as follows:

1. My name is Ralph Chapman
2. I live at 3188 E. 1969th Road, Ottawa, Illinois 61350
3. On or about the 1st day of May 2006, I received a written communication advising me of an "informational" meeting regarding the installation of a 138,000-volt power line from Ottawa to Wedron.
4. I attended that meeting and while at the meeting, I was advised by a representative of Ameren, that because of my location, the route along the Fox River, was the least desirable route and would not be the route taken. I was told that Ameren was required to submit three routes but that they always get their primary route.
5. Based on the statements of the Ameren representative I took no further action until I received a notice from Chief Clerk - Elizabeth A. Rolando on or about the 15th day of May 2007 indicating that several alternative routes were being proposed.
6. I called the Illinois Commerce Commission to ask some questions and was connected to both Staff Attorney - James Olivero and Staff Attorney - Janis Von Qualen via conference call.

7. The Illinois 71 Resisters had circulated a petition against the primary Wedron-Ottawa route and I asked if there would be any benefit in starting a petition against the Fox River route. Ms Von Qualen stated that it was understood that no one wanted the power lines to go through their backyards and a petition would have no value. She indicated that Judge – John Albers would recommend the best route based on the evidence provided. And that his recommendation was not binding on the Commerce Commission. Furthermore, Ms Von Qualen told me that all the affected parties would be notified and invited to attend the Commerce Commission's hearing on the subject.

8. I was never informed of the Judge's ruling nor invited to the Commerce Commission's hearing.

Further affiant sayeth not.



I, Ralph Chapman, being first duly sworn on oath do hereby state that I have read the forgoing affidavit and to my knowledge and belief it is true and correct.

Subscribed and sworn to before me
this 23 day of July, 2009.


Notary Public

RESOLUTION NO. _____-2009

A RESOLUTION REPEALING RESOLUTION NO. 83-2007

WHEREAS, on July 3, 2007, the Council of the City of Ottawa, Illinois adopted Resolution No. 83-2007 "A Resolution Opposing the Proposed Primary Ameren Transmission Lines and Supporting Certain Alternatives Thereto", and

WHEREAS, during the course of the hearing before the Illinois Commerce Commission in Docket No. 06-0706 the City of Ottawa and Ameren submitted a stipulation addressing the City's opposition to the proposed primary route between Ottawa and Wedron, and

WHEREAS, the hearing before the Illinois Commerce Commission has been concluded and a final administrative decision has been rendered relying heavily upon the aforesaid stipulation, and

WHEREAS, many residents, including the owner of Skydive Chicago, have expressed their opposition to the route selected by the Illinois Commerce Commission as having a detrimental effect on the operation of Skydive Chicago, the environment along the Fox River and property values in general, and

WHEREAS, the City of Ottawa was not aware of most of the concerns of its citizens at the time of the adoption of Resolution No. 83-2007, and

WHEREAS, the Council of the City of Ottawa finds that the repeal of Resolution No. 83-2007 is warranted and in the best interests of the City of Ottawa and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OTTAWA, ILLINOIS, AS FOLLOWS:

Section One: That the foregoing preambles are incorporated herein by reference as if set forth verbatim.

Section Two: That Resolution No. 83-2007 adopted July 3, 2007, be, and the same is hereby repealed.

Section Three: That the Mayor be, and is hereby directed to forward correspondence and a copy of this Resolution to the Illinois Commerce Commission and Ameren expressing the City's public concerns for the final decision of the Illinois Commerce Commission establishing the transmission route between Ottawa and Wedron.

Section Four: That all resolutions or parts thereof which are in conflict herewith are hereby repealed.

Ex "C" p.1

Section Five: That this Resolution shall be in full force and effect immediately after its passage and approval as required by law.

	Aye	Nay	Absent
Mayor Eschbach	_____	_____	_____
Commissioner Aussem	_____	_____	_____
Commissioner Whitney	_____	_____	_____
Commissioner Baxter	_____	_____	_____
Commissioner Eichelkraut	_____	_____	_____

Passed and Approved this _____ day of _____, 2009.

Robert M. Eschbach, Mayor

ATTEST:

Shelly L. Munks, City Clerk

Ex "C"
p.2

DAYTON TOWNSHIP

RESOLUTION # 08-20-09

A RESOLUTION VOICING OBJECTION TO
PROPOSED AMEREN POWER LINES
ALONG THE FOX RIVER

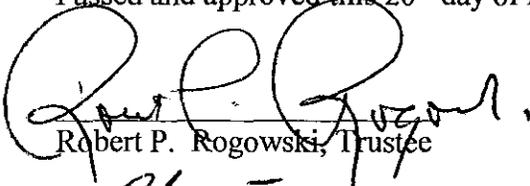
WHEREAS, the entire eastern corporate limits of Dayton Township, LaSalle County, Illinois adjoin the Fox River; and,

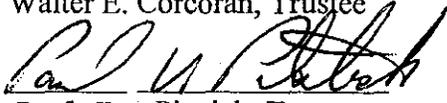
WHEREAS, this board desires to preserve the recreational and aesthetic benefits of said Fox River Corridor including existing development along the River; and,

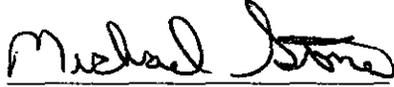
WHEREAS, this board believes that Ameren's apparent need to establish additional power lines within the vicinity of the Fox River will impair the recreational and aesthetic benefits of said Fox River Corridor and impair the value of existing development along the River;

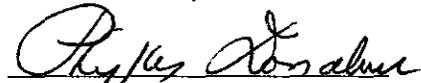
NOW, WHEREFORE, B^E IT RESOLVED that the Dayton Township Board announces and declares their opposition Ameren's plans to establishing power running along the Fox River.

Passed and approved this 20th day of August, 2009.


Robert P. Rogowski, Trustee
Absent

Walter E. Corcoran, Trustee

Paul V. Pitstick, Trustee


Michael Stone, Trustee


Phyllis Donahue, Supervisor

ATTEST:

Earl Donahue
Clerk

Ex. D₁

MEMORANDUM

TO: Fred M. Morelli, Jr.
Law Offices of Fred M. Morelli, Jr.

FROM: Robert L. Speers
Speers, Reuland & Cibulskis, P.C.

DATE: June 17, 2009

RE: Proposal by Ameren to install power lines near airport

I. Issue

It is my understanding that you represent the Ottawa Airport and Skydive Chicago in a matter involving a plan by a power company, Ameren, to install power lines (which would include poles approximately 90 feet tall) near an airport runway and in an area where parachutists are known to descend and land. You asked me to research the potential liability of the power company for installing lines in such a location.

As you know, my practice has been concentrated in personal injury and wrongful death litigation throughout my 37 years of practicing law. I have over 60 jury trial verdicts. I have 2 verdicts of over \$1,000,000 in Kane County. I have been selected as an Illinois "Leading Lawyer" and an Illinois "Super Lawyer" in the area of plaintiff's personal injury. I have also mediated over 250 personal injury or wrongful death cases.

Based on data provided by you, my general understanding of the use of the airport and the skydiving operation is as follows:

- approximately 4,000 skydive related takeoffs and landings at the airport per year;
- approximately 350 general aviation takeoffs and landings per year;
- approximately 100 helicopter takeoffs and landings per year;
- occasional hot air balloon takeoffs and landings per year;
- approximately 6,000 beginner parachute jumps per year; and
- approximately 55,000 experienced parachute jumps per year.

II. Law

Whether a duty exists in a particular case is a question of law to be determined by the court. *Tinder v. Illinois Power Co.*, 325 Ill.App.3d 606, 758 N.E.2d 483, 259 Ill.Dec. 360 (4th Dist. 2001), citing *Ward v. K Mart Corp.*, 136 Ill.2d 132, 143 Ill.Dec. 288, 554 N.E.2d 223 (1990). Among the factors that are relevant to the existence of a duty are the reasonable foreseeability of injury, the likelihood of injury, the magnitude of the burden of guarding against it, and the consequences of placing that burden on defendant. *Tinder*, citing *Ward*. In order for a legal duty to exist upon which to predicate liability, the occurrence must be reasonably foreseeable. *Clinton v. Commonwealth Edison Co.*, 36 Ill.App.3d 1064, 344 N.E.2d 509 (1st Dist. 1976).

Foreseeability means that which it is objectively reasonable to expect, not merely what might conceivably occur. *Tinder*, citing *Genaust v. Illinois Power Co.*, 62 Ill.2d 456, 343 N.E.2d 465 (1976).

Electricity is a silent, deadly, and instantaneous force, and one who uses it for profit is bound to exercise care corresponding to the dangers incident to its use. *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 45 N.E.2d 665 (1942), citing *Austin v. Public Service Co. of Northern Illinois*, 299 Ill. 112, 132 N.E. 458 (1921). The distribution of electrical energy is an inherently dangerous enterprise and power companies and those installing such lines are required to exercise a high degree of care to see that their wires are properly placed and insulated. *Cantu v. Utility Dynamics Corp.*, 70 Ill.App.3d 260, 387 N.E.2d 990, 26 Ill.Dec. 160 (1st Dist. 1979). See also *Nelson v. Commonwealth Edison Co.*, 124 Ill.App.3d 655, 465 N.E.2d 513, 80 Ill.Dec. 401 (2nd Dist. 1984).

Persons handling electricity must protect the public against danger by the proper insulation of its wires where the public is likely to come in contact with them. *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 45 N.E.2d 665 (1942). But this duty does not extend to the entire system. *Merlo*. Restrictions governing the handling of electricity must, in view of its commercial and domestic importance, be reasonable. *Tinder*. Persons engaged in the transmission of electricity are not insurers of the safety of the public, but they are bound to know the dangers incident to handling electricity and to guard against such dangers by the exercise of care commensurate with them. *Merlo*.

From the very nature of its business, an electric company using highly charged wires owes the legal duty toward every person who, in the exercise of a lawful occupation in a place where he has the legal right to be, whether for business, pleasure or convenience, is liable to come in contact with the wires to see that such wires are properly placed with reference to the safety of such persons and are properly insulated. *Merlo*. This is nothing more than the ordinary care required under the circumstances when put into practice. *Merlo*. The reason for requiring insulation and vigilance in maintaining the wires in proper condition is the deadly and dangerous power of the current carried along such wires. *Merlo*.

The test of whether electrical wires are properly located or insulated relates to whether the condition and circumstances reasonably indicate that people might come into contact with the transmission lines. *Estate of Martin v. Menard Electric Cooperative*, 202 Ill.App.3d 659, 559 N.E.2d 1125, 147 Ill.Dec. 785 (4th Dist. 1990). (See also *Nelson* in which the Appellate Court stated that because of the nature of the electrical business and highly charged wires, an electric utility company owes a duty to see that such wires are properly placed and/or properly insulated where the conditions and circumstances indicate that persons might come into reasonable proximity to those wires.) Together with this test, the Court judges foreseeability by whether it was objectively reasonable to expect an injury to occur, not whether an injury might conceivably occur. *Estate of Martin*. The test is not what might conceivably occur, but what is objectively reasonable to expect. *Tinder*, citing *Genaust*.

III. Analysis

Duty of Care

In analyzing whether Ameren would owe a duty of care under the circumstances, we need to look at the following factors: the reasonable foreseeability of the injury; the likelihood of injury; the magnitude of the burden of guarding against it; and the consequences of placing that burden on Ameren.

Reasonable Foreseeability of Injury:

The data you have provided to me indicates that there are approximately 4,000 skydive related takeoffs and landings and that approximately 61,000 parachutists land in a given year. I think it is reasonably foreseeable that a parachutist and/or another user of the airport could be injured (or even killed) if Ameren installed the power lines in the location where parachutists are known to descend and land and where other users of the airport are known to travel. It is objectively reasonable to expect that an injury would occur.

The opposition might try to argue that it is not objectively reasonable to expect that a parachutist would descend and land in the specific area where the power lines are located in an open and obvious condition. However, landing a parachute would seem to be a somewhat inexact science. Due to wind and/or other variables, a parachutist may go off course and have to land in the area where the power lines are proposed to be located instead of the target landing zone. Therefore, it would still seem objectively reasonable to expect that a parachutist could descend into the power lines and be injured.

Likelihood of Injury:

If a parachutist or other user of the airport were to come into contact with the power lines, the likelihood of injury (or death) would seem high (from electrocution or, even if the lines were insulated, from becoming tangled in the lines).

Magnitude of Guarding Against Injury and Consequences of Placing that Burden on Ameren:

The law indicates that restrictions governing the handling of electricity must, in view of its commercial and domestic importance, be reasonable. Under the circumstances, it would appear reasonable that Ameren devise a plan to put its power lines in a different location so that the lines would not interfere with the parachutists and the other users of the airport.

I do not have the information indicating what other locations are available for the power lines. Those other options, and the costs of those options, would be information to consider in further analyzing these factors of the magnitude of guarding against injury and the consequences of placing that burden on Ameren.

Conclusion

It is my opinion that Ameren likely would expose itself to liability if it were to locate its power lines in an area where parachutists are known to descend and land and where other users of the

airport are known to travel. The distribution of electrical energy is an inherently dangerous enterprise, and Ameren is required to exercise a high degree of care to see that its power lines are properly placed and insulated. Further, even if Ameren were to insulate the power lines such that the wires did not pose a risk of electrocution, the mere placement of the power lines in the proposed location would seem to be a breach of Ameren's duty of care in that parachutists and other users of the airport could still strike the power lines.

Artillery Riewaldt II
2103 FOX HILL LN
Ottawa, IL 61350

To the Board of the Illinois Commerce Commission,

I am writing you regarding the proposed Ameren IP power line route that is currently selected to run through Ottawa, IL to Wedron, IL via the Fox River. The currently approved route will travel through a forest corridor alongside the Fox River for over nine miles, requiring the clear cutting of trees and foliage along this swath 150 feet wide for the construction of the lines and the access roads to maintain them. A large amount of the vegetation slated to be destroyed is vital for the stability of the banks that lead down to the river for the prevention of soil erosion. Without a strong underlying root system from the vegetation along the bank, soil erosion rates will be severely increased, increasing sediment loading into the Fox River and promoting landslides when large sections of bare earth gives way. I am informed that the railway near Dayton has had difficulties with erosion for the same reasons, thus it is evident that this proposed route will require additional maintenance and inevitably cause damage to this natural area.

Furthermore, it is known that this section of the Fox River is home to American Bald Eagles whose well-being would certainly be impacted by the destruction of such a significant section of their forest. The construction of high voltage power lines along this corridor will produce habitat fragmentation, a situation in which the movement of wildlife is limited and impeded by dangerous and divisive structures, making it difficult for them to access resources, stay safe from harm, and successfully multiply. The presence of these power lines will have a debilitating effect on the eagles, as well as the rest of the animals in this natural area including white egrets, great blue herons, and red-tailed hawks.

Aside from the environmental implications of constructing these power lines along this route, are the recreational losses that will occur. The section of the Fox River from Wedron to Ottawa is a beautiful and relatively pristine area, and is enjoyed by many individuals for canoeing, fishing, bird watching, and general leisure. The presence of these large power lines, typically within less than a few hundred feet of the Fox River, will be a terrible eyesore, and the noise from the power lines themselves will disturb the scenic natural setting.

The destruction of eagle habitat, accelerated bank erosion, and marred beauty of an Illinois waterway are unacceptable and costly prices to pay considering that alternative routes exist in which none of these problems would occur. These alternative routes would travel along already existing infrastructure along four lane divided highways, often travelling with other pre-existing power lines. It is my understanding that when this decision was first made many of the negative facts regarding the Fox River route were not made known to the board. I urge you to reopen this case and assess all the routes with the full information necessary to make the best judgment.

Sincerely,



Artillery Riewaldt II
Resource Ecology Specialist
B.S., Natural Resources and Environmental Science

Ex. F

Objects Requiring Notice

The following are examples of structures requiring notice to the FAA:

- Proposed construction or alteration of structures such as building, towers, roadways, communications antenna, overhead communications and transmissions lines as well as the height of the supporting structures, and water towers and the supporting structure.
- Construction equipment or other temporary structures such as: cranes, derricks, stockpiles of equipment, and earth moving equipment.

Filing Notice

A Notice of Proposed Construction or Alteration (FAA Form 7460-1) must be filed at least 30 days prior to the date at which construction or alteration of a potentially hazardous structure will begin, or 30 days prior to the date of application for a construction permit. The application is filed by the owner, builder, or other responsible party involved with the construction or alteration of the object.

If the project is subject to Federal Communications Commission (FCC) licensing requirements (radio, microwave, or TV tower), notice must be filed with the FAA on or before the date of filing with the FCC. If public service, safety or health is a concern, an immediate telephone notification is acceptable if the FAA is also notified in writing within 5 days. Notification works best if the FAA is informed early and is required if the obstruction is on or near or may affect:

- An airport or heliport.
- An air navigation facility such as a VOR, outer or middle marker, etc.
- Air traffic control operations including:
 - Airport traffic control radar.
 - Air traffic controller's line of sight capability.
- AM or FM radio tower or TV station, or cause signals to be reflected upon ground-based or air navigation or communications equipment (electromagnetic interference).

The FAA will return an "Acknowledgement of Notice of Proposed Construction or Alteration" (FAA Form 7460-1) indicating either the proposal is not an obstruction to air navigation, or the proposal is presumed to be a hazard pending further study. In the latter case, the FAA will initiate a study of the airspace when so advised by the requestor.

The FAA during the normal circulation of the application will inform airport sponsors or managers of public-use airports of local construction or alteration. At this time the airport manager or sponsor will have an opportunity to comment on the potential impacts of the proposal on the airport.

In some cases the FAA may request that the structure be at a lower height and then approve the construction. However, a complete airspace study may be necessary. Comments are requested by the FAA from other parties including the other governmental agencies on the federal, state and local levels. They are asked to review the proposed construction and determine its aeronautical effects. These comments are then reviewed by the FAA, which may decide to conduct a regional airspace meeting to gather more facts.

After the study is complete, a "Determination of Hazard to Air Navigation" or a "Determination of No Hazard to Air Navigation" is issued. If a project is deemed a hazard, the FAA cannot prevent it from being constructed. However, if the structure requires a license or permit from the Federal Communications Commission (FCC), the FCC will not issue a broadcast license to a proponent whose antenna structure has been determined a hazard. The FAA's determination evaluates only a project's potential to affect navigable airspace.

FAA personnel are assigned to evaluate construction that may interfere with airspace. In Illinois, the following address should be used when requesting an evaluation of airspace problems or if there are additional questions regarding airspace:

For on-airport: Chief Engineer
 IDOT Division of Aeronautics
 One Langhorne Bond Dr.
 Capital Airport
 Springfield, IL 62707-8415
 217-785-8514

For off-airport: Federal Aviation Administration
 Great Lakes Region, AGL-520
 2300 E. Devon Avenue
 Des Plaines, IL 60018
 847-294-7435
 With a copy to IDOT, Division of Aeronautics.

Persons failing to comply with the provisions of FAR Part 77 may be subject to a criminal penalty under 49 U.S.C., Subtitle VII as amended.

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WSA CANOPY FLIGHT PLAN

1. Mark target area and draw wind line.
2. In the circle below, draw the wind-T and wind sock position as surface wind dictates.
3. Draw the *Neutral* line ("N"=Neutral) through Target Area (90° to the wind line).
4. Using the wind and neutral lines, mark the effective positive up wind ("+") and negative down wind force ("-") areas with the appropriate symbol.
5. Mark approximate exit point and approach pattern to Target Area.
6. Determine Landmarks and holding area for maintaining positive wind line.
7. Determine area Landing Hazards.
8. Select an Alternate Landing Area between approach position and Target.
9. Draw the anticipated left-hand canopy flight path back to the Landing Area.
10. At 1000 feet, if landing at Target Area is uncertain, maneuver to Alternate Landing Area.

NOTE: The positive and negative wind forces INCREASE with wind speed

