STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER COMPANY,	)	
d/b/a AmerenIP, and	)	
AMEREN ILLINOIS TRANSMISSION	)	
COMPANY	)	Docket No. 10-0173
	)	
Petition for an Order pursuant to Section 8-509	)	
of the Public Utilities Act approving	)	
Petitioners' use of eminent domain power.	)	
	)	

INITIAL BRIEF OF ILLINOIS POWER COMPANY, D/B/A AMERENIP, AND AMEREN ILLINOIS TRANSMISSION COMPANY

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TABLE OF CONTENTS

I. SUMMARY OF PETITIONERS' POSITION 1

II. ARGUMENT 2

A. Background 2

B. Standard of Approval for a Commission Grant of Eminent Domain Authority 4

C. Petitioners Have Demonstrated That Eminent Domain Authority Should Be Granted for the Unsigned Properties 8

1. Petitioners Have Had Numerous Contacts With Landowners 8
2. Petitioners' Offers of Compensation Have Been Explained 10
3. Petitioners' Offers of Compensation Are Reasonable 11
4. Petitioners Have Responded to Landowner Concerns 16
5. Further Negotiations Are Not Likely To Be Successful 19

III. CONCLUSION 19

I. SUMMARY OF PETITIONERS' POSITION

In this proceeding (and in accordance with the Illinois Commerce Commission's ("Commission") Final Order in Docket 06-0706), Illinois Power Company, d/b/a AmerenIP and Ameren Illinois Transmission Company (jointly, "Petitioners") are seeking authority under Section 8-509 of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/8-509, to exercise the power of eminent domain with respect to easements across 28 parcels ("Unsigned Properties") of land necessary for the construction of an electric transmission line (the LaSalle-Wedron Line, defined below). (Ameren Ex. 3.0, p. 25; Tr. 95.) As described more fully below, the LaSalle-Wedron Line is part of a project involving two transmission lines. A Certificate of Public Convenience and Necessity ("Certificate") and an order authorizing the construction of the two transmission lines under Section 8-503 of the Act, 220 ILCS 5/8-503, were issued in Docket 06-0706. Petitioners seek eminent domain authority with respect to the Unsigned Properties on the LaSalle-Wedron Line.[1]

Section 8-509 of the Act and longstanding Commission precedent require that a utility seeking eminent domain authority show: (1) that eminent domain is necessary to complete a project authorized under Section 8-503 of the Act; and (2) that the utility has made reasonable attempts to acquire the necessary land rights. As discussed below, Petitioners' evidence in this case demonstrates that the criteria for a grant of eminent domain authority have been met. Petitioners have made more than reasonable attempts to acquire the Unsigned Properties. They have made numerous contacts with the owners of the Unsigned Properties for the purposes of negotiation. Petitioners have developed generous offers of compensation based on extensive market and appraisal data – often offering close to 100% of fee value of the easement area for

[1] The other line, the Ottawa-Wedron Line, is not part of this proceeding.

only easement rights. Where feasible and appropriate, Petitioners have addressed landowner concerns about the easements. Nevertheless, the owners of the Unsigned Properties have not agreed to grant the required easements. Therefore, Petitioners believe that further negotiations are not likely to be successful and that eminent domain authority is required. Petitioners also note that, of the landowners of the 28 Unsigned Properties, only four have testified in opposition to the grant of eminent domain: Hank Walsh, Dee Bennett, Robert Dolder, and William Krug (the "Landowner Witnesses.") With respect to the remainder of the Unsigned Properties, no witness contests the need for eminent domain for those properties.

II. ARGUMENT

A. Background

In 2004 and 2005, Petitioners conducted a comprehensive study of the LaSalle-area electrical supply system. (Petition, p. 1.) The study found that the LaSalle area faced voltage concerns owing to the low power factor of the area loads and the corresponding large reactive power requirement. (Id., p. 1-2.) Continued load growth in the area suggested the threat of low voltage and the risk of voltage collapse under contingency conditions. (Id., p. 2.) To ensure adequate, reliable, and efficient service given these concerns, Petitioners proposed the construction of a regional transmission-line loop (the "Project") consisting of a new substation (the Wedron Fox River Substation) and two 138K lines running to the new substation: the 24-mile LaSalle-Wedron Line and the 9-mile Ottawa-Wedron Line. (Id.) In Docket 06-0706, Petitioners sought a Certificate for the transmission lines under Section 8-406 of the Act, 220 ILCS 5/8-406, and an order authorizing the Project to be built under Section 8-503 of the Act, 220 ILCS 5/8-503.

On March 11, 2009, in Docket 06-0706, the Commission: (1) granted Petitioners a Certificate for the Project and approved the route for the LaSalle-Wedron Line; and (2)

authorized Petitioners to construct the Project, including the LaSalle-Wedron Line, pursuant to Section 8-503 of the Act. (Docket 06-0706, Final Order, p. 91.) The Commission noted in Docket 06-0706, 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." (Id., p. 89.) The Commission then required Petitioners, if there was a need to seek eminent domain, to obtain Commission authorization before doing so. (Id., p. 90.) This proceeding involves Petitioners' request for eminent domain authority with respect to the LaSalle-Wedron Line.

On March 3, 2010, Petitioners filed a Petition requesting eminent domain authority with respect to certain parcels of land in order to allow them to acquire necessary rights-of-way along the LaSalle-Wedron Line. The LaSalle-Wedron Line crosses 79 properties (116 tax parcels) of private land. (Ameren Ex. 1.0, p. 2.) Petitioners originally acquired, by negotiation, easements from 36 landowners. The acquired easements covered 42 properties. (Id., p. 4.) Petitioners were originally unable to obtain easements for 33 properties, owned by 32 landowners. (Id., p. 2, 8.) Since the Petition was filed, Petitioners have obtained easements from five other landowners. (Ameren Ex. 3.0, p. 25; Tr. 95.) Petitioners are therefore now seeking eminent domain authority with respect to the remaining 28 Unsigned Properties. (Id.)

The remaining Unsigned Properties are primarily parcels of agricultural land. Petitioners are seeking rights of way 100 ft. in width for the construction of the LaSalle-Wedron Line, as well as construction easements where necessary. (Ameren Ex. 1.0, p. 5.) The 100 foot wide easement is required on long span transmission line construction to provide adequate clearance from the transmission line conductors to the edge of the right-of-way. The 100 foot easement will provide adequate National Electric Safety Code ("NESC") clearances from the conductor to

a building on the edge of the right-of-way. (Rule 234C.1.) The 100 foot easement is the minimum easement width that will provide the necessary clearance to trees or vegetation at the edge of the right-of-way. Maintenance of this clearance is necessary for the safe operation of the line. (Ameren Ex. 2.0, p. 8.) No witness disputes the requirement that the easements be a minimum of 100 feet.

Eminent domain authority is required now because the design of the LaSalle-Wedron Line is complete and construction has begun. (Ameren Ex. 2.0, p. 6.) Right-of-way clearing started in March 2010, and in areas where clearing must take place only in fall and winter months to avoid potential impacts on Indiana Bat Habitat, was suspended and will resume again in fall 2010. (Id., pp. 6-7.) Petitioners expected to start line construction possibly as early as August 2010. (Id., p. 7.) The target completion date for the LaSalle-Wedron Line is June 1, 2012. (Id.)

If Petitioners are unable to acquire the needed easements for the LaSalle-Wedron Line, the construction schedule will be delayed. (Ameren Ex. 2.0, p. 7.) Such a delay could have substantial implications for the successful completion of the LaSalle-Wedron Line, as well as the completion of the entire Project. (Id.)

B. Standard of Approval for a Commission Grant of Eminent Domain Authority

Commission approval is required before a utility seeks to condemn property. Illinois Bell Tel. Co. v. Lewis, 117 Ill. App. 3d 72, 75 (4th Dist. 1983). Section 8-509 of the Act governs the grant of eminent domain authority by the Commission. Section 8-509 provides:

> 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.

To obtain Commission approval to exercise eminent domain authority under Section 8-509, Petitioners must show: (1) that they have received a Section 8-503 order authorizing construction of a project; and (2) that eminent domain is necessary to complete the authorized construction. This "necessary" showing requires the utility to show that it has made reasonable attempts to acquire the outstanding land rights through the negotiation process, but that further attempts to acquire the necessary land rights are not expected to be successful. Illinois Power Co. d/b/a AmerenIP & Ameren Ill. Trans. Co., Docket 08-0291/08-0449 (Cons.) (June 9, 2009) ("Docket 08-0449"), p. 15. In making such a "necessity" determination, the Commission generally considers: (1) the continued need for the project; (2) the nature and extent of negotiations with landowners, including the "number and nature of contacts between the entity seeking the authority and those whose property will be encumbered" and "the basis for any monetary or other offers made," and (3) and the likelihood that further negotiations would prove useful in arriving at negotiated settlements. See Central Ill. Pub. Serv. Co., Docket 95-0484 (July 17, 1996), p. 13.

The Commission's requirement that a utility show the continuing need for a project, reasonable attempts to acquire property through negotiation, and the likelihood that further negotiations will be unsuccessful in order to obtain eminent domain authority is long-standing. See Docket 08-0449 (granting eminent domain authority because petitioners made reasonable attempts to acquire the outstanding easement rights through negotiation); Central Ill. Pub. Serv. Co., Docket 88-0342 (April 18, 1990) (finding petitioners made "a reasonably diligent effort to acquire an easement" and granting eminent-domain authority); Central Ill. Pub. Serv. Co., Docket 90-0022 (October 3, 1990), p. 10, 24 (finding "[p]etitioner has made a diligent effort to acquire right-of-way from landowners" where petitioner made numerous contacts with

landowners, explained the basis of compensation to landowners, made comparable offers to landowners with similar circumstances, and attempted to address landowner concerns); Central Ill. Pub. Serv. Co., Docket 90-0206 (January 9, 1991) (same); Central Ill. Pub. Serv. Co., Docket 90-0427 (April 3, 1991) (same); Mt. Carmel Pub. Util. Co., Docket 91-0113 (May 16, 1991) (same); Illinois Power Co., Docket 92-0306 (December 16, 1992) (finding petitioner made a diligent effort to acquire the easements and 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) (granting eminent domain where petitioner "has tried diligently to voluntarily acquire all of the [rights of way] necessary for this project, but so far has been unable to do so."); TransCanada Keystone Pipeline, Docket 06-0458 (April 4, 2007) (granting eminent domain authority where petitioner engaged in good-faith negotiations and made a reasonable effort to obtain easements through negotiations); 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).

As a general matter, the continuing need for a project is shown through receipt of an order under Section 8-503 of the Act authorizing the utility to construct the project (and Petitioners received such an order in Docket 06-0706). When determining whether a party has made reasonable attempts to acquire the property, the Commission primarily looks at five factors: (1) the number and extent of contacts with the landowners; (2) whether the party has explained its offer of compensation; (3) whether the offers of compensation are comparable to offers made

to similarly situated landowners; (4) whether the party has made an effort to address landowner concerns; and (5) whether further negotiations will likely prove fruitful. Central Ill. Pub. Serv. Co., Docket 95-0484, p. 13; see Central Ill. Pub. Serv. Co., Docket 90-0022 (Oct. 3, 1990), p. 24 (discussing number and extent of contacts with landowners, whether petitioner explained the basis of compensation to landowners, whether petitioner made comparable offers to landowners with similar circumstances, and whether petitioner attempted to address landowner concerns); Mount Carmel Pub. Util. Co., Docket 91-0113 (May 16, 1991), p. 6 (same); Central Ill. Pub. Serv. Co., Docket 90-0206 (January 9, 1991) (same); Central Ill. Pub. Serv. Co., Docket 90-0427 (April 3, 1991) (same). Petitioners address each of these criteria below.

Petitioners note that, although the question of the amount of Petitioners' offers of compensation is at issue for the purpose of determining whether Petitioners made reasonable attempts to acquire the necessary land rights, the question of actual valuation or "just compensation" lies within the jurisdiction of the circuit court rather than the Commission. See, e.g., Rich v. City of Chicago, 59 Ill. 286, 1871 WL 8040, *11 (1871) (explaining that "the act of ascertaining the value is . . . judicial in its nature."); Central Ill. Pub. Serv. Co., Docket 90-0022 (Oct. 3, 1990), pp. 24-25 ("The Commission [] does not have the authority to establish the price to be paid to landowners for right-of-way. That issue is to be decided by the courts."); Illinois Cities Water Co. v. City of Mount Vernon, 11 Ill. 2d 547, 551 (1957) (purpose of a condemnation proceeding in state court is to award just compensation for any property taken via eminent domain). With regard to the offer made, therefore, the Commission does not assess the *fairness* of the offer value, but rather assesses whether the utility has "made a diligent effort to acquire right-of-way from landowners" and in doing so has "explained the basis for the

compensation offered." Central Ill. Pub. Serv. Co., Docket 90-0022 (Oct. 3, 1990), p. 24; Mount Carmel Pub. Util. Co., Docket 91-0113 (May 16, 1991), p. 6.

C. Petitioners Have Demonstrated That Eminent Domain Authority Should Be Granted for the Unsigned Properties

As Petitioners have already received a Certificate and an order authorizing construction of the LaSalle-Wedron Line under Section 8-503, they must only show that eminent domain is necessary—i.e. that Petitioners have made reasonable attempts to acquire the property but do not expect to be able to acquire it. Petitioners have made the required reasonable attempts, as discussed in detail below. After numerous contacts with landowners, Petitioners have made fair and reasonable offers of compensation but expect further negotiations will not be successful. Thus, a grant of eminent domain authority is appropriate and consistent with the standard for grant of eminent domain authority as recently expressed by the Commission in Docket 08-0449. In Docket 08-0449, Petitioners presented evidence regarding their reasonable attempts to acquire transmission line easement rights through negotiations. See Docket 08-0449, Order, pp. 4-8. The evidence presented by Petitioners in this proceeding is substantially similar to that presented in Docket 08-0449. The Commission found in Docket 08-0449 that Petitioners "have made reasonable attempts to acquire the outstanding easement rights through the negotiation process" and granted eminent domain authority. Docket 08-0449, Order, p. 15. The same conclusion is warranted here, and the Commission should grant eminent domain authority to the Petitioners for the Unsigned Properties.

1. Petitioners Have Had Numerous Contacts With Landowners.

Before Petitioners began contacting landowners about easement rights, Petitioners consulted with various stakeholder groups in the planning of its lines. (Ameren Ex. 1.0, p. 6.) Petitioners sought input from affected political subdivisions including counties, cities, and towns.

(Id.) Petitioners also involved Illinois governmental agencies, including the departments of agriculture and environment and natural resources in the planning process. (Id.) After the initial planning process, Petitioners began efforts to contact landowners along the LaSalle-Wedron Line and to acquire the necessary easements in April 2006. (Id.)

In compliance with the requirements of 83 Ill. Administrative Code Part 300, Petitioners sent landowners 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. (Ameren Ex. 1.0, p. 7.) No contact with these owners was initiated by Petitioners for at least fourteen subsequent days.[2] (Id.)

Beginning in May 2006, Petitioners contacted landowners along the LaSalle-Wedron Line, 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. (Ameren Ex. 1.0, p. 7.) As Petitioners' witness Mr. Nelson explained, each landowner of an Unsigned Property on the LaSalle-Wedron Line has been contacted at least 5 times, by letter, phone, or in person for the purposes of negotiation. (Id., p. 8; Ameren Exs. 1.3, 3.9.) Many were contacted 10 times or more. (Ameren Ex. 3.9.) Of the Landowner Witnesses, Mr. Dolder has been contacted a total of 7 times, Mr. Krug has been contacted a total of 9 times, Mr. Bennett has been contacted a total of 10 times, and Mr. Walsh has been contacted a total of 11 times. (Ameren Ex. 3.9.) Thus, Petitioners clearly have had numerous contacts with the landowners of the Unsigned Properties. In fact, evidence submitted on behalf of the Landowner Witnesses, in the form of Petitioners' land agent contact logs,

[2] On November 16, 2007, landowners were also sent official notice of the Docket No. 06-0706 proceeding by the Commission. (Ameren Ex. 1.0, p. 7.)

demonstrates both the number and extent of Petitioners contact and negotiations with the owners of the Unsigned Properties. (See Nelson Cross Ex. 1, p. 5, Resp. to Data Request JLC 1.05.)

2. Petitioners' Offers of Compensation Have Been Explained.

Petitioners' contacts with landowners involved making reasonable offers of compensation for easement rights and fully explaining the basis of those offers. Petitioners provided landowners information regarding the type and location of proposed facilities, including, *inter alia*, a written project purpose statement, a small scale map, and an aerial photocopy of the easement area. (Ameren Ex. 1.0, p. 7.) Petitioners or their representatives explained the dimensions of the proposed easement as well as the proposed easement document. (Id., p. 7-8.) Petitioners have thoroughly explained the basis of their offers of compensation. Each landowner was provided a calculation sheet stating the value of the land, the easement acreage, the percentage of market value Petitioners felt the easement should be valued at, and the offer. (Ameren Ex. 3.0, p. 5.) The basis of the offer was initially explained either in person or by phone to each landowner. (Id.) Examples include the "Compensation Summary Sheet" attached to Mr. Walsh's direct testimony, and the explanatory letter sent to Mr. Bennett. (See Walsh Ex. 6.0; Bennett Ex. 4.4; Ameren Ex. 3.1.) Further explanation of the basis of compensation was provided on request. (See Bennett Ex. 4.4.) Petitioners also provided the Landowner Witnesses with copies of the summary appraisals (discussed below). (Nelson Cross Ex. 1, p. 9, Resp. to Data Request JLC 1.09.) Petitioners or their representatives were also available for discussion and negotiations as required by each landowner. (Ameren Ex. 1.0, p. 8.) Evidence offered by the Landowner Witnesses themselves confirms that Petitioners have explained the basis for the offer of compensation. (See Bennett Ex. 4.4; Walsh Ex. 6.0.)

3. **Petitioners' Offers of Compensation Are Reasonable.**

As Mr. Nelson explained, Petitioners' intent is to fairly compensate affected landowners for the impact of the transmission line, so that after the line is constructed, there is no impact upon property value beyond the compensation paid by Petitioners. (Ameren Ex. 1.0, p. 10.) Upon completion of construction, Petitioners will also assess and repair or compensate landowners for damages that may result from transmission line construction activities. This includes damages to crops, soil, fences and other property. (Id.)

Petitioners prepared easement offers for the Unsigned Properties based on extrinsic market data, including valuation studies performed by Stenger Professional Services, Inc. (Ameren Ex. 1.0, p. 9.) Value ranges of property within identified categories were determined by an examination of actual sales of real estate of similar type within the project area, and a representative value was chosen from the higher values within those ranges of values. (Id., p. 11.) Petitioners initially offered 50-75% of the fee simple value of each parcel, because the rights conveyed are easement rights for a specific purpose only (the transmission line) and do not represent the full fee value of the land to be encumbered by the easement. (Id.) Owners of the Unsigned Properties would retain all other property rights other than the easement rights being sought by Petitioners. (Id.) Farming, access, and all other uses that do not conflict with the transmission line rights remain with the landowner. Additional or non-typical factors that are specific to each individual property and have impact on property value were also factored into the final offer determination. (Id., pp. 11-12; Tr. 102-104.) Approximately 12 landowners accepted the Petitioners' initial offer or made a counteroffer that Petitioners accepted. The remaining landowners did not accept the initial offers. (Ameren Ex. 1.0, p. 12.)

Petitioners also retained Integra Realty Resources to complete summary appraisal reports for properties that did not accept initial offers. (Ameren Ex. 1.0, pp. 10, 13; Nelson Cross Ex. 1,

p. 9, Resp. to Data Request JLC 1.09.) The appraisal reports were based on detailed investigation of the real estate market and took into consideration relevant factors which affect value in developing their opinion of value for the proposed easement being sought by Petitioners. In a few instances, the appraised values were higher than the values underlying the original offers made by Petitioners, as described above, but in most cases the appraised property values were lower. (Ameren Ex. 1.0, p. 13.)

In those instances where the appraised property values were lower than the initial offers, Petitioners did not reduce its offers to reflect the lower values. (Ameren Ex. 1.0, p. 13.) Instead, the offers were increased to reflect compensation levels being offered to other landowners. (Id.) Petitioners also adjusted offers based on changing land values in the area, particularly keeping track of land sales along I-39 and I-80 that elevated property values in the area. (Id., p. 12-13.) Twenty-four landowners accepted revised offers or bargained with Petitioners and ultimately reached agreements on compensation. (Id., p. 13.) Only the Unsigned Properties remain.

Petitioners' method of determining its offers of compensation is reasonable because it recognizes that Ameren is obtaining an easement, not the full fee value of the land. The 0.50-0.75 factor represents recognition of the fact that the rights conveyed are easement rights for a specific purpose (the transmission lines). (Ameren Ex. 1.0, p. 13.) As mentioned above, the landowner retains all other property rights. In many cases, Petitioners have increased the initial offer from a factor of 0.50 or 0.75 to 100% of the estimated property value in order to make a reasonable attempt at acquiring the property and to show good-faith during the negotiations. (Id., p. 14.)

Moreover, the offers of compensation that have been accepted by landowners along the LaSalle-Wedron Line are similar to the offers that have been rejected by the landowners of the

Unsigned Properties. (Id., p. 15.) Given the numerous contacts with the landowners of the Unsigned Properties, and their refusal to accept fair and reasonable offers of compensation, there is no reason to believe that further negotiation will be fruitful. (Id., p. 16.) Therefore, eminent domain is necessary to acquire the Unsigned Parcels. (Id.)

The Landowner Witnesses suggest that Petitioners have made offers of compensation that are unreasonably low. (See Krug Ex. 3.0; Dolder Ex. 2.0; Bennett Ex. 4.0.) Petitioners note that, as stated above, the question of the actual valuation of Landowner Witnesses' land or "just compensation" is not germane to this proceeding – such question lies within the jurisdiction of the circuit court rather than the Commission. See Central Ill. Pub. Serv. Co., Docket 90-0022 (Oct. 3, 1990), pp. 24-25 ("The Commission [] does not have the authority to establish the price to be paid to landowners for right-of-way. That issue is to be decided by the courts."). The Commission does not even assess the fairness of the offers, but only whether Petitioners have made reasonable attempts to acquire the properties in question. Central Ill. Pub. Serv. Co., Docket 90-0022 (Oct. 3, 1990), p. 24. As discussed below, and as the Landowner Witnesses' own discovery responses demonstrate, Petitioners' offers are based on land values that are consistent with property values in the Project area. As a result, they represent reasonable attempts to acquire the Landowner Witnesses' land rights.

In Petitioners' Data Requests, Petitioners asked Mr. Bennett, "Is Mr. Bennett aware of any other land sales of agricultural land in the LaSalle-Wedron area since 2005 that he does not discuss on page 3? If yes: (i) identify each such sale and (ii) list each such sale in a format similar to Mr. Dolder's Ex. 2.4." (AmerenIP Cross Ex. 1, p. 2, Resp. to Data Request Ameren-Bennett 1.08.) In response, Mr. Bennett referenced a table of land sales he believes are comparable to Petitioners' easement request. (Id., p. 101 (The table is provided as Attachment A

hereto.)). The table shows that Petitioners' offer to Mr. Bennett, based on $35,000 per acre, is well within the range of compensation per acre provided in Mr. Bennett's own table. For example, in the Utica area, the valuations in the table range from $8,800 to $80,000, with most in the range of $12,000 to $44,000. (Id.) The table shows that the average price per acre for property in the LaSalle Area is $18,244.17, the average price per acre in the Utica Area is $26,319.21, the average price per acre in the Ottawa Area is $23,569.00, and the average price per acre for agricultural land is $6,890.13.[3] Petitioners' offer of $35,000 per acre to Mr. Bennett is comparable to the sale prices of two of his own properties in the Utica Area, which sold for $30,000 and $43,860 per acre respectively. (AmerenIP Cross Ex. 1, p. 101, Resp. to Data Request Ameren-Bennett 1.08.) In fact, the following table lists the average price per acre from Mr. Bennett's table and compares it to the valuation per acre for offers made by Petitioners to the Landowner Witnesses.

Landowner Witness	**Property Type[4]**	**Valuation per acre of offer by Petitioners[5]**	**Average sale price per acre in the Lasalle Area (a)**	**Average sale price per acre in the Utica Area (a)**	**Average sale price per acre in the Ottawa Area (a)**	**Average sale price per acre for agricultural land (a)**
Bennett	Commercial	$35,000	$18,244.17	$26,319.21	$23,569.00	$6,890.13
Dolder	Agricultural	$10,000	$18,244.17	$26,319.21	$23,569.00	$6,890.13
Krug	Agricultural	$10,000	$18,244.17	$26,319.21	$23,569.00	$6,890.13
Walsh	Residential	$50,000	$18,244.17	$26,319.21	$23,569.00	$6,890.13
(a) Source: AmerenIP Cross Ex. 1, p. 101, Resp. to Data Request Ameren-Bennett 1.08.						

[3] The average price per acre was calculated by adding the numbers in the "sale price per acre" column found in the table and dividing by the number of properties. For example, the average sale price per acre in the LaSalle Area is ($14,961 + $25,470 + $15,000 + $22,500 + $11,534 + $20,000) / 6 = $18,244.17

[4] Nelson Cross Ex. 1, Response to Data Request JLC 1.09, Attach., pp. 4, 13, 14, 16

[5] Ameren Exs. 3.1, pp. 2-5; 3.0, p. 11.

Petitioners' offers to Mr. Bennett and Mr. Walsh are based on values greater than the average sale price per acre for any area from Mr. Bennett's own table. Moreover, the offers to Mr. Dolder and Mr. Krug are based on values greater than the average sale price for agricultural land, according to Mr. Bennett's table. Petitioners' offers for the Unsigned Properties are therefore more than reasonable in comparison to sales prices in the Project area.

The Landowner Witnesses' other concerns about the reasonableness of Petitioners' offers are also unfounded. For example, Mr. Bennett compares the easement offer to a sale of land to the State of Illinois in which 0.132 acres were split from a larger parcel of land. (Ameren Ex. 3.0, p. 15; AmerenIP Cross Ex. 1, p. 3, Resp. to Data Request Ameren-Bennett 1.09.) Petitioners are not buying any land; they request only an easement. Further, when a small tract is split from a larger parcel, it is common to pay a higher price per acre for the small tract than would otherwise be paid for the entire parcel. (Ameren Ex. 3.0, p. 16.) Next, Mr. Bennett compares the easement area to a sale of land on the other side of Interstate 80, but such comparison is inapposite because Mr. Bennett's land is already partly encumbered by setback limitations. (Id.) Therefore, a comparison of land values between Mr. Bennett's property and these other parcels is meaningless.

Mr. Dolder also attempts to compare the proposed easement offer to other sales of land. (Dolder Ex. 2.4.) Mr. Dolder, however, originally cited commercial property as a basis for comparison, but his land is categorized as agricultural. (Ameren Ex. 3.0, p. 19.) None of the sales of commercial property cited by Mr. Dolder are applicable to his property, which is encumbered by three pipeline easements--even further reducing the value of his property. (Id., p. 20.)

Likewise, the Landowner Witnesses' contentions that their property will decline in value (beyond the offer of compensation amount) as a result of the construction of the transmission line is unwarranted. The contentions are based on speculation, as the Landowner Witnesses admit they have not obtained independent appraisals or conducted studies of any kind to support their assertions. (Ameren Ex. 3.0, p. 6; AmerenIP Cross Ex. 1, p. 4, Resp. to Data Request Ameren-Bennett 1.12; AmerenIP Cross Ex. 2, p. 2, Resp. to Data Request Ameren-Dolder 1.08; AmerenIP Cross Ex. 3, p. 1, 2, Resp. to Data Request Ameren-Krug 1.01, 1.06; AmerenIP Cross Ex. 4, p. 2, Resp. to Data Request Ameren-Walsh 1.06.) Nothing in the Petitioners' appraisals indicates that property value will be affected for any portion of the land beyond the easement strip. (Ameren Ex. 3.0, p.6.) As for the easement itself, in many cases, Petitioners are offering compensation at 100% of fee value for the easement even though the landowners retain all existing property rights except for the easement rights. (Id.) Except for the small area occupied by the transmission poles (0.001 acre), the current use of the properties can continue with the transmission lines in place. (Id., p. 23.) Thus, the property values are not expected to decline beyond the compensation being offered by Petitioners, but Petitioners will pay for crop loss or other actual damage caused by its utilization of the proposed easement (Ameren Ex. 3.0, p. 7, 22.)

4. Petitioners Have Responded to Landowner Concerns.

Where feasible and appropriate, Petitioners have responded to general landowner concerns throughout the negotiations process. Petitioners have responded promptly to landowner requests regarding resurvey, access to the parcels, movement of poles and counteroffers in an effort at reaching successful negotiations. (Ameren Ex. 1.0, p. 10.) To address landowner concerns, Petitioners hired local counsel to negotiate with landowners or their counsel. (Id., p. 10.) With regard to easement language change requests, Petitioners have considered each

request and have been willing to make changes as long as the changes do not compromise the easement rights being sought by Petitioners. (Id., p. 14.) With regard to structure locations, Petitioners have been willing to make changes to structure locations when such changes do not compromise Petitioners' design standards for the reliability and the integrity of the line. (Id.)

In addition, Petitioners have specifically responded to concerns of the four Landowner Witnesses who testified in this proceeding. First, each Landowner Witness argues that Petitioners propose to acquire an easement for a purpose broader than what the Commission authorized in its Certificate. (Ameren Ex. 3.0, p. 2.) However, the Certificate authorizes the construction, operation, and maintenance of a transmission line along the LaSalle-Wedron line. Based on discussions and negotiations with the Landowner Witnesses, the easement documents state that "no above ground structures other than one line of self-supporting single shaft poles, and no permanent anchor or guy wires shall be placed on the Grantor's land," to ensure the easement does not exceed the rights granted by the Commission. (Id., p. 3.) The easement clearly allows for only one transmission line, in accord with the authority granted by the Commission in Docket 06-0706 for the LaSalle-Wedron line.

In addition, Mr. Walsh and Mr. Bennett were concerned with easement language granting Petitioners the right of ingress and egress to access the easement strip, so Petitioners changed the easement agreement to confine access to that from public roads or adjacent easement strips unless Petitioners receive prior approval from Mr. Walsh and Mr. Bennett. (Ameren Ex. 3.0, p. 10, 14.)

The Landowner Witnesses further argue that Petitioners failed to provide appraisals of the subject property to Landowner Witnesses. As Mr. Nelson explained, these appraisals were intended to be used internally by Petitioners to verify that the existing offers which had been

presented to a landowner were fair. In all cases, our offers were well above these appraisal amounts. Petitioners also initially interpreted the terms and limiting conditions of the appraisal report to require that the Petitioners not share copies of the reports with third parties. It was subsequently determined that Petitioners can provide a copy of the appraisal report to the Landowners, but should do so under the terms of a confidentiality agreement. (Ameren Ex. 3.0, p. 4.) Petitioners have since shared the appraisals with Landowner Witnesses. (Nelson Cross Ex. 1, Resp. to Data Request JLC 1.09.)

Mr. Dolder and Mr. Krug also believe the easement project will impact tile lines or surface/subsurface drainage. Petitioners, however, will attempt to avoid any tile lines and will compensate landowners financially for any accidental disturbance to tile or drainage lines. (Ameren Ex. 3.0, p. 17, 22.) In fact, the Agricultural Impact Mitigation Agreement, as well as separate negotiations with the Landowner Witnesses, clearly state that Petitioners are responsible for any damage or drainage problems caused by the construction or maintenance of the Transmission Line. (Id., p. 18, 22.) Mr. Dolder and Mr. Krug further claim it will be difficult, if not impossible, to continue aerial application of chemicals on their property, but both admit that this assertion is based on nothing more than their mere opinions. (AmerenIP Cross Ex. 2, p. 3, Resp. to Data Request Ameren-Dolder 1.11; AmerenIP Cross Ex. 3, p. 2-3, Resp. to Data Request Ameren-Krug 1.08.)

Mr. Walsh also claims that the destruction of a line of trees will eliminate his privacy, but this claim has no merit. (Ameren Ex. 3.0, p. 12.) As an initial matter, the trees run partly on Mr. Walsh's property and partly on Mr. Marshall's property. (Id.) In any case, none of the trees between Mr. Walsh's home and the easement will be removed. (Id.) Mr. Walsh cannot point to any study or analysis for the assertion that there will be a loss of trees or that his land use would

be impacted by such loss. (AmerenIP Cross Ex. 4, p. 3, Resp. to Data Request Ameren-Walsh 1.08.)

5. Further Negotiations Are Not Likely To Be Successful.

Petitioners have undertaken extensive efforts, negotiating with landowners for years, in an attempt to acquire the Unsigned Properties. Petitioners retained professional, experienced land agents, who met repeatedly with landowners. (Ameren Ex. 1.0, p. 9.) 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. (Id., p. 10, 13.) Where possible, Petitioners have revised the text of the easement and/or structure location to address landowners' concerns regarding the breadth of the right being granted. (Id., p. 14.) Accordingly, Petitioners have made reasonable attempts to gain the necessary easement rights. (Id., p. 3.) Petitioners do not, however, believe further negotiations will be successful. As Mr. Nelson concluded: (1) Ameren has negotiated for rights-of-way across the Unsigned Properties in good faith; (2) Ameren can not reasonably expect to acquire rights-of-way for the Unsigned Properties through negotiation; and (3) the Commission should authorize the exercise of eminent domain for the Unsigned Properties. (Id., p. 16.) Petitioners have therefore demonstrated that they should receive eminent domain authority pursuant to Section 8-509 of the Act.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Commission grant eminent domain authority for the Unsigned Properties on LaSalle-Wedron Line under Section 8-509 of the Illinois Public Utilities Act.

Dated: August 26, 2010

Respectfully submitted,

ILLINOIS POWER COMPANY, d/b/a
AmerenIP, and AMEREN ILLINOIS
TRANSMISSION COMPANY

By: *_/s/ Albert D. Sturtevant_*
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Schedule 1.2 to PROTED 80 Exhibit 1.0 (PROPRIETARY)

Parcel Number	Name on Parcel/Grantor	Sale Price Per Acre	Acres Sold	Date Sold	Distance to Ameren Primary Route
LaSalle Area					
A-26	Ronald F. Senica	$14,961	80	Nov-05	Less than 1/4 mile
A-32	Kerry M. Izzo	$25,470	27	Jan-06	Approx. 1/2 mile
A-37	Frank L. & Ellen S. Bedenko	$15,000	44	Apr-06	Approx. 1/2 mile
A-42	Gaetano A. & Catherine M. Scoma	$22,500	12	Jul-06	Approx. 1/2 mile
P-1	Patricia Kotocki	$11,534	123	Jul-04	Adjacent to
P-2	Ellen Knaff	$20,000	17	Jan-07	On
Utica Area					
A-4	Glenn & Gladys L. Streul	$16,000	132	May-05	On
A-5	Bryant M. Senica	$12,525	155	May-05	On
A-31	Kenneth A. & Barbara Small	$29,485	40	Jan-06	Less than 1/4 mile
A-34	Dee J. & Bonnie Bennett	*$30,000	*44	Jan-06	On
A-44	Russell L. Kinzer	$8,800	75	Mar-06	On
A-45	Charles F. & Thama F. Cook	$19,999	80	Feb-06	Approx. 1/2 mile
A-46	Ronald F. Senica	$25,000	59	Aug-06	Less than 1/4 mile
A-47	Carl J. & Carol J. Sauler	$19,999	120	Feb-06	Approx. 1/2 mile
P-4	Dee J. & Bonnie Bennett	$43,860	10	Jul-06	Less than 1/4 mile
P-5	Janet Small	$35,865	134	Nov-06	Less than 1/4 mile
P-6	J. & P.F	$80,000	10		Less than 1/4 mile
P-7	Norbert & Elizabeth Dudek	$20,020	116	Feb-06	Approx. 1 mile
P-8	Harmon Trust	$20,068	58	Feb-06	Approx. 1 mile
P-9	Wayne Hess	$15,868	159	Nov-06	Less than 1/4 mile
Ottawa Area					
A-1	Alfred B. Kain	$27,207	70	Jun-05	On or adjacent to
A-2	LaSalle Bank Trust	$21,000	226	Jun-05	Approx. 1/2 mile
A-40	Jobst, Bragg, Bragg	$22,500	58	Nov-05	On or adjacent to
Agricultural					
A-10	G. Ryan Trust	$7,500	60	Apr-05	Approx. 7 miles, Approx. 3 miles to PROTED 1
A-11	Gary Baker	$7,500	55	Apr-05	Approx. 7 miles, Approx. 3 miles to PROTED 1
A-17	Chad & Mark Wixom	$6,700	75	Mar-05	Approx. 8 miles, Approx. 4 miles to PROTED 1
A-19	Gerald K. & Eva Thorson	$5,500	90	Oct-04	Approx. 6 miles, Approx. 2 miles to PROTED 1
A-23	Mary Ellen Stoddon	$5,772	42	Jan-05	Approx. 6 miles, Approx. 2 miles to PROTED 1
P-10	Harold & Darlene Meisel	$7,009	159	Jan-06	Approx. 5 miles, Approx. 1 miles to PROTED 1
P-11	Edward Czerkies	$7,000	160	Oct-05	Approx. 4 miles, on PROTED 1
P-12	Patricia A. Leary	$8,140	347	Sep-06	Approx. 5 miles, Approx. 1 miles to PROTED 1

*Includes house to be demolished-sold separately
Creek bi-sects property

CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, hereby certify that on August 26, 2010, I served a copy of the foregoing **Initial Brief of Illinois Power Company, d/b/a AmerenIP, and Ameren Illinois Transmission Company** by electronic mail, or where indicated below, via U.S. Mail, first class postage prepaid, from 77 W. Wacker, Chicago, Illinois 60601, to the individuals on the Commission's Service List for Docket 10-0173.

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