STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Department of Transportation, of the State of Illinois, for and on behalf of the People of the State of Illinois	)	
v.	)	Docket No. 11-0706
Commonwealth Edison Company and unknown owners, generally	)	
Petition for approval of the taking or damaging of certain properties owned by a public utility in Cook County, Illinois by exercising the right of eminent domain Parcel No. OH40076PE & TE Job R-90-004-07.	)	

DRAFT PROPOSED ORDER
SUBMITTED BY COMMONWEALTH EDISON COMPANY

By the Commission:

On November 1, 2011, the Department of Transportation of the State of Illinois ("IDOT") filed a verified petition with the Illinois Commerce Commission ("Commission"), pursuant to Section 735 ILCS 30/10-5-10 of the Eminent Domain Act of Illinois ("the Act"), (220 ILCS 30/10-5-10), for approval to take and/or damage certain properties owned by Commonwealth Edison Company ("ComEd"), a public utility subject to the jurisdiction of the Commission. Under Articles 2 and 4 of the Illinois Highway Code (605 ILCS 5/2-101, 5/2-220, and §§5/4-101 through 5/4-512), IDOT is engaged in a project to improve US 45 from 131st Street to 143rd Street, Cook County, Illinois. (Petition ¶1). The project requires acquisition of Parcel No. 0H40076PE & TE to be acquired as a permanent easement for highway purposes and legally described in Exhibit A attached to the petition and temporary easements for construction purposes and legally described in Exhibit B attached to the petition, respectively (Id. ¶2).

The project to improve US 45 in Cook County, Illinois involves construction and improvement of the roadway, structures and/or intersections along US 45 and thereby constitutes a public purpose. (Id. ¶4). ComEd is the title holder to certain real property, the legal description of which is contained on Exhibit A and Exhibit B. IDOT has deemed it necessary to construct a public improvement project in Cook County and improve vehicular traffic and the safety of the motoring public. IDOT's Plat of Highways depicting the property to be acquired is contained on Exhibit C attached to the petition. (Id. ¶6). IDOT has been authorized to acquire a permanent easement and temporary easements over, upon and under of Parcel No. 0H40076PE & TE and it is necessary for IDOT to acquire said property to effect the described improvements. (Id. ¶7).

IDOT has been unable to acquire the title it needs from ComEd to complete this project and therefore seeks to acquire the property under the eminent domain laws of Illinois. (Id. ¶8). Section 10-5-10 of the Act requires IDOT to obtain Commission approval prior to the taking or damaging of ComEd's property, as described in Exhibits A and B. IDOT requests that the Commission approve the taking of the property by exercise of the right of eminent domain. (Id. ¶9).

Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came on for a hearing before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois on May 25, 2012. Each party was represented by counsel and the parties presented testimony and evidence. At the conclusion of the hearing on May 25, 2012, the record was marked "Heard and Taken."

I. IDOT Position

An unresolved issue in this Docket is whether ComEd would sign off on an Affidavit of Title or other conveyance documents. The issue concerning the affidavit centers upon whether any other non-record claimants or unknown owners could or might claim title to the land and/or an interest in the proceeds to be paid by IDOT. IDOT is not satisfied that ComEd could convey a free and clear title.

IDOT and ComEd further disagree as to whether IDOT's improvements to US 45 and its use of ComEd's land will result in increased safety hazards for motorists entering ComEd's transmission substation along US 45, adjacent to the location of the property in dispute. IDOT's expert witness, Mr. Reid Magner of Civiltech Engineering, Inc., testified that even though ComEd's southbound access to its facility would be removed, ComEd's vehicles would be able to safely access its facility from the right lane of traffic when traveling in the northbound direction.

US 45 in Cook County, Illinois is being improved and IDOT seeks to acquire the property in question for any and all highway related matters. IDOT unsuccessfully attempted to acquire the permanent easement and a temporary easement it needs from ComEd, and that IDOT is still trying to acquire the easement in perpetuity for any and all highway purposes. (Id.).

II. ComEd Position

ComEd has not completed its review of IDOT's proposed acquisition and therefore has not agreed to convey any property to IDOT. IDOT agrees that, for purposes of this matter only, and for no other purpose or proceeding, the permanent easement to be acquired by IDOT in the eminent domain proceeding will be subject to the terms and conditions of a certain master agreement between the parties.

ComEd further disputes the condemnation on the grounds that IDOT's condemnation of the property and proposed improvements to US 45 will result in

increased safety hazards for motorists in the area of ComEd's transmission substation. ComEd's witness, Mr. Patrick Donohue, testified that ComEd's primary access to its substation for oversized vehicles is via a left turn when traveling in the southbound direction. IDOT's improvements along US 45 removes this access point. Further, access in the northbound direction will be hampered as result of the condemnation because vehicles will have a substantially shortened driveway to use in completing a 135 degree right turn. The shortened driveway increases the difficulty of the turn, increases the deceleration required while traveling on US 45 prior to turning and ultimately increases the safety hazard for ComEd employees, its contractors and, generally the driving public.

ComEd proposed two alternatives that would increase safety for all motorists. It proposed a dedicated turn lane with an apron in the northbound direction or a dedicated turn lane in the southbound direction that would allow ComEd to make left turns into its property.

III. Commission Analysis and Conclusions

IDOT seeks permanent and temporary easements from ComEd in order to complete repairs to a portion of US 45 in Cook County, Illinois. IDOT and ComEd agree that a permanent easement and the temporary easement can be acquired through eminent domain proceedings in the circuit court in Cook County provided the Commission enters an order approving the taking of ComEd's property as requested in the Petition filed herein.

Section 10-5-10(g) of the Act states that no property may be taken or damaged, pursuant to the provisions of this Act, without the approval of the Illinois Commerce Commission. (735 ILCS 30/10-5-10(g)).

Section 30/5-5-5(a) of the Act states that a condemning authority may not take or damage property by the exercise of the power of eminent domain unless it is for a public use. Subsection (b) states that if the exercise of eminent domain authority is to acquire property for public ownership and control then the condemning authority must prove that (i) the acquisition of the property is necessary for a public purpose and (ii) the acquired property will be owned and controlled by the condemning authority or another governmental entity. (735 ILCS 30/5-5-5 (a) and (b)).

Section 10-5-10(a) of the Act states that when the right (i) to take private property for public use, without the owner's consent, (ii) to construct or maintain any public road, railroad, plankroad, turnpike road, canal or other public work or improvement, or (iii) to damage property not actually taken has been or is conferred by general law or special charter upon any corporate or municipal authority, public body, officer or agent, person, commissioner, or corporation and when (iii) the owner's name or residence is unknown the party authorized to take or damage the property so required may apply to the circuit court of the county where the property or any part of the property is situated, by filing with the clerk a complaint. The complaint shall set forth, by reference, (i) the complainant's authority in the premises, (ii) the purpose for which the property is sought to be taken or damaged, (iii) a description of the property, and (iv) the names of all persons interested in the property as

owners or otherwise, as appearing of record, if known, or if not known stating that fact; and shall pray to the court to cause the compensation to be paid to the owner to be assessed. (735 ILCS 30/10-5-10(a)).

Section 30/20-5-5 of the Act allows IDOT to file a motion any time after filing a complaint for quick-take, but prior to the entry of judgment, requesting that it be (i) vested with fee simple title or lesser title is sufficient to permit IDOT to proceed with its project until final compensation can be determined. IDOT seeks to acquire a permanent easement for highway purposes to enable it to complete the widening project. 735 ILCS 30/20-5-5).

Section 4-501 of the Illinois Highway Code provides that IDOT may acquire the fee simple title, or such lesser interest as may be desired, to any land, rights, or other property necessary for the construction, maintenance or operation of State highways, or necessary for locating, relocating, extending, widening or straightening any State highway by purchase or by the exercise of the right of eminent domain under the eminent domain laws of this State. (emphasis added) (605 ILCS 5/4-501).

It is undisputed that immediate ownership to the property in question by IDOT is necessary to improve US 45 in Cook County, Illinois. The planned improvements are designed to facilitate vehicular traffic in Cook County and this will enhance the safety of the driving public. The Commission finds that the work to be done on US 45 is fully within the public interest and clearly constitutes a public purpose as contemplated by Sections 10/5-5-5(a) and (b) and Section 30/5-5-5(a) of the Act.

An analysis of the various statutory provisions set out above makes clear that IDOT obtain an interest in title to the subject property less than the full fee simple title to complete the necessary road work. Section 30/20-5-5 of the Act and Section 4-501 of the Illinois Highway Code both permit IDOT to take a lesser interest in the property than fee simple title (e.g. a permanent easement) and still allow it to perform the required road improvements. Moreover, since IDOT's petition names ComEd and "unknown owners" as Respondents, Section 10-5-10(a) of the Act provides the procedure to follow when the names of all interested parties in the property, as owners or otherwise, are not known.

The Commission finds that Section 30/20-5-5, Section 30/5-5-5(a) of the Act and Section 4-501 of the Illinois Highway Code, provide ample statutory authority for the Commission to grant approval to IDOT pursuant to Sections 10-5-10(a) and (g) of the Act to acquire a permanent easement in Parcel No. 0H40076PE, described in Exhibit A attached to the Petition, to be amended, as needed, consistent with Findings (5) and (7), and to acquire a temporary easement in of Parcel No. 0H40076TE, described in Exhibit B attached to the Petition, to be amended, as needed, consistent with Findings (5) and (7), by exercise of the right of eminent domain.

The Commission finds that IDOT's condemnation of ComEd's property results in increased safety hazards for ComEd's employees, its contractors and the driving public. These hazards shall be mitigated by IDOT installing a dedicated right or left turn lane, as described in ComEd Exhibit Nos. 1 and 2.

The Commission, having reviewed the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) IDOT is a Department of State government created pursuant to Section 5/5-15 of the Civil Administrative Code of Illinois (20 ILCS 5/5-15);

(2) ComEd is an Illinois Corporation engaged in furnishing utility services in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Illinois Public Utilities Act (220 ILCS 5/3-105);

(3) the Commission has jurisdiction over the IDOT and ComEd, and over the subject matter herein;

(4) the recitals of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and law;

(5) IDOT shall install either a dedicated ComEd right or left turn lane, as described in ComEd Exhibit Nos. 1 and 2;

(6) Parcels No. 0H40076PE & TE described in Exhibit A and Exhibit B attached to the petition are owned by ComEd and possibly unknown others;

(7) Petitioner is hereby granted 30 days to amend its petition for the limited purpose of requesting condemnation authority of any additional land required in order to comply with Paragraph (5) of the Commission's findings;

(8) IDOT seeks Commission approval to acquire, by exercise of the right of eminent domain, a permanent easement in Parcel No. 0H40076PE, in order to complete roadwork on US 45 in Cook County, Illinois;

(9) acquiring Parcel No. 0H40076PE to complete roadwork on US 45 will enable IDOT to facilitate vehicular traffic and enhance the safety of the driving public; the acquisition therefore serves a public purpose;

(10) subject to the findings herein, in order to enable IDOT to serve the public interest, the Commission should grant approval to IDOT pursuant to Sections 10-5-10(a) and (g), Section 30/20-5-5 and Section 30/5-5-5(a) of the Act, and Section 4-501 of the Illinois Highway Code, to acquire a permanent easement in Parcel No. 0H40076PE described in Exhibit A attached to the petition, to be amended, as needed, consistent with Findings (5) and (7), and to acquire a temporary easement in of Parcel No. 0H40076TE, described in Exhibit B attached to the Petition, to be

amended, as needed, consistent with Findings (5) and (7), by exercise of the right of eminent domain.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that approval is granted to the Department of Transportation of the State of Illinois to acquire a permanent easement in Parcel No. 0H40076PE described in Exhibit A attached to the petition, to be amended, as needed, consistent with Findings (5) and (7), and to acquire a temporary easement in for the period of five years or upon completion of construction, whichever first occurs, in over and across Parcel No. 0H40076TE, described in Exhibit B attached to the Petition, to be amended, as needed, consistent with Findings (5) and (7), by exercise of the right of eminent domain in the circuit court in Winnebago County.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Dated:
Briefs on Exceptions:
Reply Briefs on Exceptions:

Terrance A. Hilliard
Administrative Law Judge