

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois :
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 :
Petition for a Certificate of Public Convenience and : Docket No. 12-0598
Necessity, pursuant to Section 8-406.1 of the Illinois :
Public Utilities Act, and an Order pursuant to Section :
8-503 of the Public Utilities Act, to Construct, Operate :
and Maintain a New High Voltage Electric Service :
Line and Related Facilities in the Counties of Adams, :
Brown, Cass, Champaign, Christian, Clark, Coles, :
Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, :
Pike, Sangamon, Schuyler, Scott and Shelby, Illinois. :

**STAFF’S RESPONSE TO AMEREN’S MOTION FOR LEAVE TO FILE
AMENDED LANDOWNER LIST AND FOR ORDER DIRECTING
THE CLERK TO ISSUE NOTICE TO CERTAIN AFFECTED LANDOWNERS**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, and in response to the Motion for Leave to File Amended Landowner List and for Order Directing the Clerk to Issue Notice to Certain Affected Landowners (“Motion”) filed by Ameren Transmission Company of Illinois (“ATXI”), requests that the Motion be denied. In support thereof, Staff states as follows:

I. Introduction

ATXI filed its Petition for a Certificate of Public Convenience and Necessity in this matter on November 7, 2012, pursuant to Section 8-406.1 of the Public Utilities Act (“the Act”), which authorizes utilities to seek expedited Commission review of their requests for certificates of public convenience and necessity. *See, generally*, 220 ILCS 5/8-406.1. Under Section 8-406.1, the Commission’s review of a request for CPCN may in no

event exceed 225 days from the date of filing. Id. On November 28, 2012, the Illinois Commerce Commission (“Commission”) entered an order extending the deadline for Commission action in this matter to the maximum allowed under Section 8-406.1. November 28, 2012 Bench Minutes at 13-14. On December 14, 2012, the Administrative Law Judges (“ALJs”) entered a Case Management Plan for this Docket, which included a requirement that all parties wishing to propose an alternate route must do so no later than December 31, 2012. On January 7, 2013, two months after filing its original petition, ATXI filed a Motion for Leave to File Amended Landowner List, detailing its “inadvertent and regrettable” error in failing to serve notice of the Petition upon approximately 130 landowners.

II. Discussion

ATXI’s Motion asserts that as the landowners received notice through publication of public hearings required by Section 8-406.1(a)(3) prior to filing its Petition, and as the over 100 landowners make up a “small subset of landowners” potentially affected by the Project, the Docket should proceed without alteration to the Case Management Plan entered into on December 14. Motion at 2. ATXI claims that there is support to maintain the schedule as entered, under “83 Ill. Adm. Code § 200.1950(h) [sic].” 83 Ill. Adm. Code §200.150(h), to which Staff assumes that ATXI in fact refers, states that:

A person filing an application under Section 8-406 of the Public Utilities Act for a Certificate of Public Convenience and Necessity to construct facilities upon or across privately owned tracts of land, or filing under Section 8-503 of that Act [220 ILCS 5/8-503], shall include with the application when filed with the Commission a list containing the name and address of each owner of record of the land as disclosed by the records of the tax collector of the county in which the land is located, as of not more than 30 days prior to the filing of the application. The Commission shall notify the owners of record of the time and place scheduled for the initial hearing upon the application. The foregoing

provisions for notice to owners of record shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application.

Section 200.150(h) is inapplicable here. It is abundantly clear that ATXI did not file for a Certificate of Public Convenience and Necessity under Section 8-406 of the Act; rather, its Petition is brought pursuant to Section 8-406.1, which is an entirely separate section. Section 8-406.1 is not a subsection of Section 406. Rule 200.150(h) applies specifically to Section 8-406 and is not applicable to other Sections merely because similar relief can be obtained under those sections. Section 8-406.1 contains specific notification requirements due to the expedited nature of proceedings under that Section, and those requirements are entirely different from those under Section 8-406. There is no indication, considering the significant differences between the two Sections, that any omission of 8-406.1 from Part 200.150(h) was merely administrative oversight. Furthermore, the Part 200.150(h) refers to the omission of “the” name and address of “an” order. The rule clearly was not intended to allow a petitioner to neglect to notify hundreds of affected landowners, and yet proceed with hearing of its petition on an expedited basis. It simply does not follow that a party petitioning under the expedited circumstances of Section 8-406.1 would be granted leave to fail to give notice to affected landowners upon bringing its petition. Accordingly, Section 200.150(h) does not apply in the instant matter.

Hypothetically and in the alternative, if Part 200.150(h) is interpreted to apply to Section 8-406.1, the rule still does not require this Docket to proceed as previously scheduled. The rule clearly states that the lack of notice “shall in no way invalidate a subsequent order of the Commission relating to the application.” 83 Ill. Adm. Code

§200.150(h). As noted above, the only Commission order related to the application is the order extending the statutory deadline for the proceeding another 75 days. The orders of the ALJs are not the same as an “order of the Commission” that shall not be invalidated. A change in the Case Management Plan would not be an “invalidation” of a Commission order. It follows that the schedule set in this Docket may be changed, provided that the Commission take action on the Petition within the statutory deadline.

ATXI further argues that if the procedural schedule must be altered, landowners previously without notice may have 14 days from its Motion (11 days within filing of this Response) to submit an alternate route and may submit direct testimony by February 18, 2013. Motion at 3. The proposal by ATXI does not provide the affected landowners adequate time to retain an expert, conduct discovery, and propose an alternate route, should they wish to do so. As such, the modified schedule as proposed in ATXI’s Motion should be rejected.

III. Recommendation

In the fast-paced process required by Section 8-406.1, there is no opportunity available by law to extend the process to accommodate the landowners that were not provided proper statutory notice. ATXI’s request to notify landowners and continue onward in this docket, when over 60 of the statutorily-limited 225 days have already passed, denies due process to the 130 landowners who have not received notice, even with an alteration to the Case Management Plan. Accordingly, Staff respectfully recommends that ATXI voluntarily withdraw its Petition solely with respect to the Pana – Mt. Zion segment of the Project, and re-file that portion in a separate proceeding in order to make certain the 130 affected landowners may receive appropriate notice and

an opportunity to be heard. In the event that ATXI chooses to withdraw this portion, the instant Docket may proceed in accordance with the Case Management Plan entered on December 14. Should ATXI choose not to withdraw the Pana – Mt. Zion segment, in order to make certain the 130 affected landowners may receive appropriate notice and an opportunity to be heard, Staff recommends that ATXI's Motion be denied and the Commission enter an order dismissing solely the Pana-Mt. Zion segment of the Project, without prejudice, and with leave for ATXI to re-file this portion of the line in accordance with the requirements of Section 8-406.1 or 8-406, as it elects. Finally, should the Pana – Mt. Zion segment of the Project remain in the instant Petition, Staff recommends that the Case Management Plan be revised with input from the affected landowners, granting adequate time to propose alternative routes, congruent to the time granted to landowners who received notice upon filing of the Petition.

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that the Administrative Law Judges deny the Motion for Leave to File Amended Landowner List and for Order Directing the Clerk to Issue Notice to Certain Affected Landowners filed by Ameren Transmission Company of Illinois and for further relief as described above.

Respectfully submitted,

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