

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Ameren Transmission Company of Illinois :  
: :  
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. :

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STAFF OF THE ILLINOIS COMMERCE COMMISSION'S RESPONSE TO  
AMEREN TRANSMISSION COMPANY OF ILLINOIS'  
PETITION FOR INTERLOCUTOTY REVIEW

NOW COMES the Staff of the Illinois Commerce Commission (Staff), by and through its undersigned counsel, and pursuant to Section 200.520(a) of the Rules of Practice Before the Illinois Commerce Commission, 83 Ill. Adm. Code 200.520(a), states, in response to Ameren Transmission Company of Illinois' (ATXI's) Petition for Interlocutory Review, as follows:

1. 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, Petition*, 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.*

2. On November 28, 2012, the Commission entered an order extending the deadline for Commission action in this matter to the maximum allowed under Section 8-

406.1. See Notice of Commission Action (November 28, 2012). Accordingly, the deadline for Commission decision was extended to June 20, 2013.

3. On December 14, 2012, the Administrative Law Judges (ALJs) entered a case management order pursuant to which that deadline for decision would be met. See Notice of ALJs' Ruling (December 14, 2012).

4. On January 7, 2013, 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. See Motion. The property owned by such landowners is located generally along the segment of the proposed line between Pana, Illinois and Mt. Zion, Illinois. Id. ATXI recommended that, except for certain accommodations to be made for the newly-notified landowners, the original schedule remain in effect. Id.

5. Staff submitted a response to ATXI's Motion on January 11, 2013 in which Staff recommended, *inter alia*, that:

- a) 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 received appropriate notice and an opportunity to be heard. In the event that ATXI chooses to withdraw this portion, the matter could proceed in accordance with the Case Management Plan entered on December 14.
- b) In the event ATXI chose 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, 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.

Staff Response at 4-5

6. On January 16, 2013, the ALJs issued a Notice, which stated, inter alia, as follows:

Notice is hereby given that upon reviewing [ATXI's] January 7, 2013 motion and the related responses and replies, the [ALJs] will allow the amendment of the landowner list but consider the ATXI petition to have been completely filed only as of January 7, 2013. Accordingly, the 150-day deadline in this matter is June 6, 2013. The [ALJ], however, have placed before the Commission on its January 24, 2013 Bench Session the question of whether the Commission wishes to extend the deadline another 75 days as permitted by Section 8-406.1(g). If the deadline is extended by the Commission, the deadline will be August 20, 2013.

Notice at 1.

7. On January 18, 2012, ATXI filed its Petition for Interlocutory Review. See, *generally*, Petition. In its Petition, ATXI asserts that the ALJs' ruling as set forth in their January 16, 2013 Notice should be set aside, and the original schedule reinstated. See, *generally*, Petition at 3-7. ATXI first argues, in summary, that it has supplied all notices specifically required by Section 8-406.1 and Commission rules. Petition at 3-5. It further states that it has complied with all requirements of Section 200.150(h) of the Commission's Rules, 83 Ill. Adm. Code 200.150(h), and even had it failed to do so, these requirements are not jurisdictional and do not require or warrant the relief granted by the ALJs. Petition at 5-6. It next argues, as at previously did in its Motion, that the original schedule should remain in effect, with certain accommodations to be made for the newly-notified landowners. Petition at 7.

8. Finally, and in the alternative, ATXI argues that:

[I]n light of the unique circumstance created by the Ruling, ATXI has concluded that Staff's proposal [to dismiss the Pana – Mt. Zion portion of the proceeding without prejudice] is preferable to delaying the entire Project. Therefore, as an alternative, ATXI would not object to an order dismissing the certificate request for the Pana –Mt. Zion line segment of

the Transmission Line, 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. If this alternative was adopted, however, given the proximity of the February 11, 2013 filing date for Staff and Intervener direct to the likely date of Commission action on this Petition, ATXI recommends that its alternate schedule on page 11 of its Reply still be adopted (but without the carve out filings dates of February 4 and March 4 for the Pana- Mt. Zion landowners).

Id. at 7-8

9. As noted above, ATXI is at least is prepared to proceed in a manner consistent with the relief sought by Staff in Staff's January 11 Response. Accordingly, and without necessarily endorsing the arguments advanced by ATXI, Staff recommends that the Commission enter an Order granting ATXI's Petition, insofar as it seeks the relief recommended by Staff in its January 11, 2013, Response, and endorsed in the alternative by ATXI in its Petition, as set forth in paragraph 7 herein.

10. At least one party, the Macon County Property Owners, have recommended that ATXI's Petition be dismissed in its entirety. See Macon County Property Owners' Response to Motion for Leave to File Amended Landowner List at 2. The Staff recommends that the Commission not consider granting such relief. Assuming that the basis of the Macon County Property Owners' prayer is that proper notice was not given, it appears to the Staff that proper statutory notice was indeed given, a proposition not apparently in dispute. Further, numerous parties have intervened, substantial discovery has been promulgated, and resources expended. Administrative economy dictates that the matter proceed, with the exception of the Pana - Mt. Zion portion, which is, in any case, the only portion of the project where affected landowners have not received actual notice.

11. Staff recognizes the efforts of the ALJs, who, placed in a difficult position by competing interests, have in response crafted a fair-minded resolution. Regrettably, Staff is unable to endorse it. As noted above, there appears to be no question that Ameren has satisfied statutory notice requirements, and as such the ALJs' determination that ATXI's Petition was complete only as of January 7, 2013 may prove difficult to justify as a matter of law.

12. Further, Staff recommends that the Commission consider the statutory 225-day deadline imposed by Section 8-406.1 of the Act. Section 8-406.1 is entitled: "Certificate of public convenience and necessity; expedited procedure;" requires that a petitioner under the Section provide detailed information in its filing: "to facilitate the expedited review process;" requires that the discovery schedule: "take into consideration the expedited nature of the proceeding;" and, as noted above, states that the Commission "shall" issue its decision with 150 days of filing, unless it finds that good cause exists to extend the date for decision by a further 75 days. 220 ILCS 5/8-406.1(a), (b), (g). All of these aspects of the statute indicate that the Generally Assembly enacted this provision to make certain that petitions brought under it were resolved quickly above all else. Accordingly, the Staff recommends that the Commission view the 225-day deadline as mandatory, requiring and not merely directing the Commission to issue its order within 225 days. See, e.g., Emerald Casino v. Ill. Gaming Bd., 346 Ill.App.3d 18, 803 N.E.2d 914 (1<sup>st</sup> Dist. 2003) (holding that the word "shall" as used in a administrative agency's enabling statute is generally mandatory, and its mandatory or directory nature is to be determined from the plain language of the statute).

13. Again, the Staff recommends that the Commission order the relief that Staff has recommended, and that ATXI appears prepared to accept: that the Pana- Mt. Zion portion of the Petition be dismissed and the remainder of the proceeding continue subject to the December 14, 2012 Case Management Order.

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that the Administrative Law Judges grant ATXI's Petition insofar as it requests dismissal without prejudice of the Pana – Mt. Zion portion of the project.

Respectfully submitted,

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