

evidentiary matter, the Stipulation should not be admitted into the evidentiary record. Instead, MSSCLPG mischaracterizes the Stipulation as a “settlement” and argues that it (1) amends the Petition such that the schedule should be reset, and (2) in so doing, has somehow caught potential interveners unawares. These arguments should be rejected.

MSSCLPG’s discussion appears to be based on a fundamental misunderstanding of the Stipulation. MSSCLPG complains that the Stipulation does not settle all the rights of the parties. (Response ¶ 5.) But it does not purport to. ATXI is not contending that the Stipulation is a “settlement document,” signed by all parties, as suggested in the Response. *Business and Professional People for the Public Interest v. The Illinois Commerce Commission*, 136 Ill. 2d. 192, 209-210 (1989). Rather, the Stipulation represents the resolution of certain issues by certain parties, and requires the approval of the Commission as supported by the record. *Id.* at 217. The Stipulation is not binding on parties who have not signed it, as indicated in the proviso in Staff’s Response (in which Staff does not otherwise object to the admission of the Stipulation). (See Staff Response to Joint Motion to File and Admit a Stipulation (Mar. 21, 2013).) However, contrary to MSSCLPG’s assertion, the Stipulation does further the Commission policy of “encouraging settlement” by seeking to resolve some of the issues that were otherwise in dispute, which were raised by two of the parties to this proceeding.

MSSCLPG further contends that ATXI is “in essence” amending its original Petition by “substituting as its Primary Route a portion of what had been identified as the Alternate Route, between Meredosia and Pawnee, Illinois”. (Response ¶ 2.) But the Stipulation is not an amendment to ATXI’s Petition. In accordance with Section 8-406.1 of the Public Utilities Act, ATXI proposed a Primary and Alternate right of way for the transmission line, including the portion of the route between Meredosia and Pawnee, Illinois. 220 ILCS 5/8-406.1(1)(B)(viii).

ATXI's Petition remains unchanged in this regard. The Stipulation does not amend the Petition, but rather it resolves and narrows certain issues raised in this proceeding by the agreement of two parties, ATXI and MSCLTF, to support the Alternate Route between Meredosia and Pawnee, Illinois for the Commission's approval. As both the direct testimony offered in support of the Petition and the Stipulation made clear, both the Primary and Alternate Routes are permissible and constructable – in other words, both are viable route options. (See generally ATXI Pet. ¶ 10; ATXI Ex. 4.0, p. 8; Stipulation ATXI and MSCLTF ¶ 5.) As explained in the Stipulation, however, ATXI has stipulated to the Alternate Route from Meredosia to Pawnee to resolve certain issues between itself and other parties to this proceeding. This is not an amendment of ATXI's Petition. Otherwise, following MSSCLPG's logic, the ALJs would be required to reset the schedule every time a route other than the Primary Route could potentially be adopted by the Commission. Such an interpretation would not only unreasonably delay the proceeding, but would render the entire proceeding of selecting the best route based on the concerns of all parties and interveners impossible.

Further, the folly of MSSCLPG's logic can be found in its making meaningless the ALJs' ruling instructing landowners in the study area or affected by the proposed routes to propose additional alternate routes. (Pre-Trial Conference Tr., p. 40 (Dec. 3, 2012).) Does this mean that if ATXI finds merit in an interveners' alternate route, it is barred from supporting the route via a stipulation with that party? Surely the ALJs did not intend that to be the case.

Therefore, MSSCLPG's request to reset the case schedule is also not appropriate. MSSCLPG's request to reset the case schedule ignores the circumstances resulting in the ALJ's determination to "consider the ATXI petition to have been completely filed only as of January 7, 2013." (Notice, p. 1 (Jan. 16, 2013).) The ALJ's reset the case schedule following a Motion

filed by ATXI because certain landowners had been inadvertently omitted from the landowner notice list – in other words because certain landowners had (inadvertently) not yet received notice of the proceeding. This concern is not present with the Stipulation, as landowners along both the Primary and Alternate Route between Meredosia and Pawnee have received notice of the proceeding, and are aware that their land may be impacted by the selection of either the Primary or Alternate Route. Therefore, MSSCLPG’s request to reset the schedule should be rejected.

Finally, MSSCLPG argues that acceptance of the Stipulation “would be unfair and prejudicial to [unspecified] potential parties who might have reviewed this matter and reached a decision to take no action based upon the allegations as to the Primary Route” (Response ¶ 3.) This argument is unfounded. A “well-informed” potential intervener (to use MSSCLPG’s words), however, would be unlikely to reach such a conclusion. First, ATXI has clearly stated in testimony that its position is that both the Primary and Alternate Routes are permissible and can be constructed. (ATXI Ex. 4.0, pp. 8-9.) Secondly, landowners along the Meredosia to Pawnee portion of the route have received notice from the Commission Clerk that states “you are receiving this notice because the Commission has been informed that you have an interest in property affected by one or more” of the routes proposed in this proceeding. (See e.g. Notice and Notice of Continuance of Hearing, p. 1 (Jan. 31, 2013). Third, the ALJ’s stated in the initial pre-trial conference on December 3, 2012, that any person who wished to contest any of ATXI’s routes (either the Primary or Alternate) “need to actually intervene in this case, and . . . must do so pursuant to 83 Ill. Admn. Code Part 200.” (Pre-Trial Conference Tr., p. 36.) Further, the ALJs stated that it is not enough to simply oppose a route; rather a party must propose an alternate route, with specificity, and to identify any other landowners potentially affected by such

alternate route. (Pre-Trial Conference Tr., p. 40.) The ALJ's directive was not limited to ATXI's Primary Route. This language makes clear to a party with a concern about any route, whether Primary or Alternate or intervener-proposed, should not simply "sit on the sidelines." And many "well-informed" landowners have followed the ALJs' advice and intervened to oppose not only ATXI's Primary Route, but also ATXI's Alternate Route and routes proposed by other interveners. Further, the Commission has the authority to approve a final route that is not the utility's proposed primary or alternate route, and has done so in the past. See generally, Dockets 06-0179 and 06-0706. In sum, these factors indicate that a landowner along any route, Primary, Alternate or intervener route, have ample notice that their land may be affected in this proceeding, and that they should take steps to contest that route, if they oppose it. Therefore, MSSCPG's claim that landowners have not been advised that their rights will be affected, is simply not true.

For the above reasons, the Response should be denied and the Stipulation should be properly entered into the evidentiary record.

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Respectfully submitted,

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Respectfully submitted,

Morgan and Sangamon County
Landowners and Tenant Farmers

A handwritten signature in black ink that reads "Bradley B. Wilson". The signature is written in a cursive style with a horizontal line underneath it.

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on March 28, 2013, I caused a copy of the foregoing *Joint Reply in Support of Motion for Leave to File Stipulation* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

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