

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS	)	
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Petition for a Certificate of Public Convenience and 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.	)	Docket No. 12-0598
	)	

INITIAL BRIEF OF ILLINOIS AGRICULTURAL ASSOCIATION

Pursuant to Section 200.800 of the Rules Practice of the Illinois Commerce Commission ("Commission"), 83 ILL. ADM. CODE 200.800, the ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau ("Farm Bureau"), by and through its attorney, Laura A. Harmon, hereby files its Initial Brief in the above-captioned proceeding.

I. INTRODUCTION

On November 7, 2012, Ameren Transmission Company of Illinois ("ATXI") filed a petition for expedited review by the Illinois Commerce Commission ("Commission"), pursuant to Section 8-406.1 of the Illinois Public Utility Act (the "PUA") 220 ILCS 5/8-406.1 seeking a Certificate of Public Convenience and Necessity ("CPCN") to construct, operate and maintain a new 375-mile long 345 kV electric transmission line and related facilities. Under 406.1, the Commission's review of a request for a CPCN may not exceed 225 days from the date of filing the petition. The Administrative Law Judges' ("ALJs") December 14, 2012 Case Management Plan ("CMP") gave landowner interveners 17 days to plan and file an alternate route and identify all affected landowners. On January 7, 2013 ATXI filed a motion seeking leave to amend the list

of potentially affected landowners by adding 130 landowners who were inadvertently omitted from its filing on November 7, 2012. The ALJs allowed ATXI to amend the list of potentially impacted landowners, but ruled that ATXI's petition was completely filed only as of January 7, 2013. On January 24, 2013, the Commission granted the ALJs request to extend the deadline to issue a ruling by August 20, 2013. Interveners who had not previously identified alternate routes were given until February 11, 2013 to file such routes and identify all affected landowners. Evidentiary hearings were held May 13-17, 2013.

## II. REQUIREMENTS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Section 8-406.1(f) of the PUA requires the Commission to grant a CPCN, if based upon the evidentiary record, it finds that the project meets three criteria. The Farm Bureau takes no position on the need for the project or ATXI's ability to manage, supervise, construct or finance the Illinois Rivers Project (the "Project"). At issue here is whether the Project "is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote development of an effectively competitive electricity market" and "is equitable to all customers, and is the least cost means of satisfying those objectives." 220 ILCS 5/8-406.1(f)(1)

## III. LEAST-COST AND THE PROPOSED TRANSMISSION LINE ROUTES

Most of the landowner interveners impacted by the Project are farmers and many are members of the Farm Bureau. Farm Bureau does not endorse a particular route or segment of any proposed route, but is concerned that the expedited review process does not ensure that landowners' due process rights have been adequately protected in this proceeding. While Section 406.1 allows discovery and evidentiary hearings where landowners have an opportunity to be heard, the 225 day time limitation does not allow the Commission to conduct the discovery and hearings in a manner commensurate with the magnitude of the property rights at risk. The

lack of time, length of the proposed transmission line, and number of interveners in this proceeding results in high risk that landowners will not be afforded due process afforded under the fourteenth amendment to the United States Constitution and article I, section 2, of the Illinois Constitution. *Abandonment of Wells Located in Illinois by Leavell*, 343 Ill.App.3d 303, 306, 796 N.E.2d 623 (2003). Immediately after the petition was filed, the ALJ's gave ATXI the opportunity to withdraw certain segments of the Project from this petition in order to reduce the number and complexity of issues. On the eve of the evidentiary hearings, the ALJ's gave ATXI the opportunity to voluntarily withdraw this petition from the expedited review process. ATXI refused to either remove any segment of the Project from the petition or withdraw the petition from the expedited review process. A 375-mile high voltage transmission line project should not be heard under Section 406.1. The ICC's Staff Engineer, Greg Rockrohr, testified that the schedule for this proceeding does not allow for development of a complete and thorough record upon which the Commission can base its decision. (ICC Staff Exhibit 1.0R, p. 54) Rockrohr's written testimony foreshadowed what occurred during the evidentiary hearings:

I understand that the schedule in this docket is dictated by Section 8-406.1 of the Act, and it is my belief that a record that is as complete as possible will be developed. All parties appear to be working diligently to provide each other and the Commission with the best information they can within the schedule for this docket. However, due to the length of ATXI's proposed Project, and the number of interveners submitting proposals, some information about potential routes will not be thoroughly addressed in the record. My point is simply that more time for discovery and development of alternative route proposals might have led to different proposals and conclusions that are not included in the record of evidence. (ICC Staff Exhibit 1.0R, pp. 54-55)

Although major transmission line cases typically have five rounds of testimony, the statutory deadline required under Section 406.1 did not allow enough time to for the parties to engage in the discovery and rebuttal testimony process which is standard in projects the length and complexity of this Project. Section 406.1 provides no mechanism to extend the hearing process

for complex lengthy projects where multiple interveners dispute the proposed routes and ensure that potentially impacted landowners can adequately defend their property interests.

In addition to the due process issues, the routing methodology used by ATXI is flawed and fails to support an evidentiary record upon which this Commission can issue a CPCN for the entire Project. ATXI selected the primary and alternate routes and then conducted helicopter flyovers over both routes in September and October of 2012. ATXI's routing expert Donell Murphy participated in the helicopter flyovers and relied upon aerial photography, desktop assessment, internet maps and limited physical observation where the route was next to a public right of way in order to determine potential environmental impacts to residences. (Transcript of May 16, 2013, Proceedings, pp. 744-45, 783) Murphy admitted during cross examination that the number of potentially impacted residences along ATXI's proposed routes were not only overinflated but also inaccurate. ("We conservatively assumed that any building that appeared to be a residence was, in fact, an occupied residence. We felt it more appropriate to err on the side of caution. We were not able to access all residences or what appeared to be residential buildings along any of the routes." Transcript of May 16, 2013 Proceedings, p 753, lines 12-22) Murphy also agreed that it's easy to mistake a shed for a residence and they did not determine if any assumed residences were occupied. (Transcript of May 16, 2013, Proceedings, p. 784, lines 17-22, p. 785, lines 1-5) Given Murphy's failure to determine if structures were actually residences and occupied it's difficult to determine what credibility the Commission should afford to ATXI's assertions that residences will be impacted anywhere along their proposed routes. Yet, Murphy maintains that only ATXI's Rebuttal Recommended Routes should be selected and that "[m]any of the alternate route proposals submitted by Interveners reflect routing options already considered by ATXI and rejected. ((ATXI Exhibit 13.0C, p. 6, lines 125-128 (2d Rev.))

The cross examination of Intervener Leon Corzine on May 13th of the evidentiary hearings illustrates the pitfalls of relying upon helicopter reconnaissance, aerial photography and internet maps. Murphy testified that ATXI considered and rejected, due to the impact on existing residences, the Route 51 alternative route which the Corzine/Assumption Interveners proposed and Mr. Rockrohr agreed was a good choice, but there is not “adequate time in this expedited proceeding to explore modifications to the Corzine/Assumption Group” alternate route in order to avoid impacting several residences. (ICC Staff Exhibit 1.0R, p. 42, lines 887-896) (ATXI Exhibit 13.0C p. 50) At trial Mr. Corzine testified that many of the structures along Route 51 which ATXI assumed were residences were not residences, occupied or even in existence. Had ATXI driven the proposed route they would have discovered that many of the structures were grain bins, businesses or torn down due to the expansion of Route 51. (Transcript of May 13, 2013 Proceedings, pp 287-292)

Indeed, Donell Murphy testified that what is true and correct on the ground may not be reflected on a map. (Transcript of May 16, 2013 Proceedings, p 752, lines 5-14) ATXI also relied upon aerial photography to determine the proximity of the proposed line to residences and did not conduct land surveying. (Transcript of May 16, 2013 Proceedings, pp. 818-19) When asked on cross examination about the amount of time he had to examine the factors relevant to the least cost analysis, ICC Staff witness Greg Rockrohr testified that “a specific activity that we perform normally would be to drive in field various sections of every route segment, and this case there was not an opportunity to do that because of the schedule.” Like ATXI, Rockrohr was limited by aerial photography and computer software and was not able to observe from the ground “things that were not obvious from the software.” (Transcript of May 13, 2013, Proceedings, p. 208, lines 10-19). This project has nine segments and Rockrohr

estimated at trial that it would take a day to drive each segment of a route. (Transcript of May 13, 2013 Proceedings, p. 209). Rockrohr also points out the limitations of using Google maps and similar software since “it’s difficult to determine when the pictures were taken, what--what might have changed since the time those photographs were placed on the Google or Bing websites.” (Transcript of may 13, 2013, Proceedings, p. 258, lines 11-14) In light of such testimony, each segment of the proposed routes should have been driven and observed on the ground in order develop a complete and accurate evidentiary record upon which this Commission can base a decision as to the least cost route.

Murphy testified at length about the three phase route development and selection process which incorporated stakeholder and public input. During the Phase I public meetings, ATXI presented to the public for review a list of environmental siting criteria that Murphy has used in other siting projects in Illinois. The environmental siting criteria were placed into three categories labeled high, moderate and low sensitivities based upon the average percent value determined from the public feedback. Cemeteries, churches, prime farmland, residential use areas, schools and existing drainage features comprised the high sensitivities category. Planned residential development, restricted airspace, trees and woodlots were included in the moderate sensitivity category. (( ATXI Exhibit 4.3 (Part 1 of 5) pp 6-7, Table 1))

When the Phase II public meetings were held, the attendees were asked to review the categorization of the siting criteria and according to Murphy, “the feedback received suggested no change to how the environmental criteria had previously been prioritized”. ((ATXI Exhibit 4.3 (Part 1 of 5), p 7)). Despite the fact that the siting criteria were categorized as high, moderate or law sensitivities based upon the average percent value obtained from public feedback, Murphy included wooded areas (6% most sensitive) in the high sensitivities category

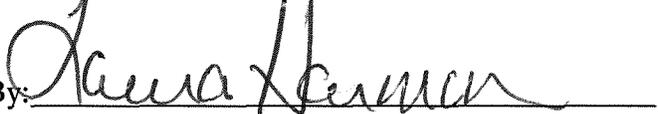
along with agricultural use areas (47% most sensitive) and existing residences (35% most sensitive). This makes no sense and is important for the purposes of selecting route alternatives under Murphy's route selection process. No sensitivity factor was weighted, and as Murphy explains "prioritization comes into play when we have two route alternatives or two corridors that are being evaluated and they are otherwise comparable and we need some type of a tiebreaker, and when we have those instances where a tiebreaker is needed, we then take a look at the priority of the sensitivities that occur along those two corridors or those two route alternatives. (Transcript May 16, 2013 Proceedings, p 735, lines 4-11, p. 811) At that point, ATXI looked at the occurrence of high sensitivities collectively along the route options in order to make a distinction between the routes. (Transcript May 16, 2013, pp 813-816). Curiously, neither Murphy's prior testimony that the criteria were categorized according to the percentage weight obtained from public feedback nor the Phase II public input supports including wooded areas (undefined) in the high sensitivity category. The failure to weight any factor and the curious manner of categorizing certain criteria makes it difficult to determine why ATXI chose its primary alternate routes. This methodology allows ATXI to justify any of their routes, and makes it difficult for: (1) interveners to compare their routes to ATXI's routes and (2) the Commission to determine what route is the least-cost means of satisfying the requirements of Section 406.1.

In its Order on Reopening in Docket 06-0706, the Commission urged AmerenIP "to do a much better job of evaluating future transmission line route alternatives before bringing its next request for authority to construct a transmission line to the Commission." (Order on Reopening p, 33) Although more data is provided under Section 406.1 at the time the petition is filed, ATXI continues to utilize flawed routing methodology and the time constraints do not allow

for additional discovery and development of alternate route proposals which normally occur in a project of this magnitude.

Respectfully submitted,

ILLINOIS AGRICULTURAL ASSOCIATION  
d/b/a the Illinois Farm Bureau

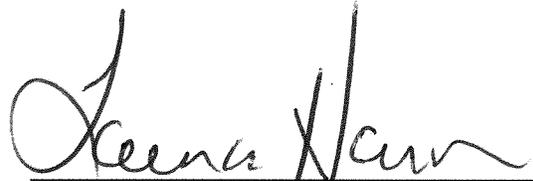
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**CERTIFICATE OF SERVICE**

I, Laura A. Harmon, an attorney, certify that on June 3, 2013, I caused a copy of the foregoing Initial Brief of Illinois Agricultural Association to be filed with the Commission and served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

  
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Laura A. Harmon