

**BEFORE THE ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS**

**AMEREN TRANSMISSION)
COMPANY OF ILLINOIS)
)
)
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

On behalf of

THE NATURE CONSERVANCY

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INITIAL BRIEF OF THE NATURE CONSERVANCY

The Nature Conservancy, by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully submits this Initial Brief in the above-captioned proceeding regarding the Petition of Ameren Transmission Company of Illinois ("Ameren") for approval to construct, operate, and maintain a new electric transmission line in select areas of the State of Illinois.

I.

INTRODUCTION

The Nature Conservancy is a non-profit conservation organization, whose principal mission is to protect ecologically important lands and waters for nature and people. (*See* Direct Testimony of K. Douglas Blodgett (TNC Ex. 1.0) at 3:42-45; *see also* www.nature.org.) The Nature Conservancy works in all 50 states and in more than 30 countries, and has five offices located in Illinois. (*See* The Nature Conservancy Verified Petition to Intervene at 1 (Dec. 3, 2012).)

In this proceeding, Ameren seeks Commission approval to route a 345 kV electric transmission line across the State of Illinois. Ameren refers to this project as the "Illinois Rivers Transmission Project." In its Petition, Ameren proposed a "Primary Route" and an "Alternate Route" for the Illinois Rivers Transmission Project.

The Nature Conservancy actively engaged in each phase of the proceeding, intervening on December 3, 2012 and participating in motion practice, submitting two alternative suggested routes, and submitting both direct and rebuttal testimony of expert witnesses. (*See* Response of The Nature Conservancy to Ameren's Motion for a Case Management Order and Schedule (Dec. 10, 2012); The Nature Conservancy's Corrected Identification of an Alternative Route (Jan. 3, 2013); the Direct Testimony of K. Douglas Blodgett ("Blodgett Direct Testimony") (TNC Exs. 1.0-1.1), Jeff Walk ("Walk Direct Testimony") (TNC Exs. 2.0-2.5), and Michael Patrick Ward ("Ward Direct Testimony") (TNC Exs. 3.0-31) (all filed on March 29, 2013 and admitted into evidence on May 15, 2013); the Rebuttal Testimony of K. Douglas Blodgett ("Blodgett Rebuttal Testimony")

(TNC Exs. 4.0-4.1) (filed on Apr. 12, 2013 and admitted into evidence on May 15, 2013).)

The Nature Conservancy's focus in this proceeding relates to potential substantial negative environmental and ecological impacts posed by the construction of the Meredosia to Ipava segment of Ameren's proposed transmission line. In particular, The Nature Conservancy identified concerns about impacts to the Spunky Bottoms Preserve located in Brown County. (*See generally* Blodgett Direct Testimony; Walk Direct Testimony; Ward Direct Testimony.) In addition, The Nature Conservancy identified concerns about impacts to a Wetland Mitigation Bank site owned by the Illinois Department of Transportation ("IDOT") and upland bluff habitat located in Brown and Schuyler Counties. (*See id.*)

In the interest of narrowing issues and reaching an acceptable resolution to its concerns, The Nature Conservancy also actively engaged Ameren in negotiations regarding a portion of the Meredosia to Ipava segment of the proposed transmission line and reached an agreement in the form of a Stipulation that was filed with the Commission prior to the submission of intervenor Rebuttal Testimony. (*See* Ameren's Motion to File and Admit a Stipulation Between Ameren and The Nature Conservancy (Apr. 11, 2013) (the Stipulation between The Nature Conservancy and Ameren is hereafter referred to as the "TNC/Ameren Stipulation").)¹

Although various portions of Ameren's suggested routes (as well as suggested routes by other parties) have been subject to strong objections from various directions

¹ A copy of the TNC/Ameren Stipulation was also included as TNC Ex. 4.1 to Mr. Blodgett's Rebuttal Testimony, filed on April 12, 2013 and admitted into evidence on May 15, 2013.

during the course of this proceeding, the TNC/Ameren Stipulated Route has not been actively contested. Although limited written rebuttal testimony suggested that one party preferred Ameren's Primary Route over the Alternate Route, (*see* Rebuttal Testimony of Gerald Korsmeyer on behalf of the Korsmeyer Family Farm Trust, at 1-2), a portion of which is co-terminus with the TNC/Ameren Stipulated Route, that objection was not pursued during the Evidentiary Hearing. (*See* Tr. at 199-1053.)

The TNC/Ameren Stipulation was admitted into evidence without objection at the Evidentiary Hearing on May 14, 2013. (*See* Tr. at 380.) No party contested Ameren's Motion to file and admit the TNC/Ameren Stipulation, nor has any party contested the content of the TNC/Ameren Stipulation itself. No party cross-examined any Ameren witnesses, The Nature Conservancy witnesses, or any other party's witnesses regarding the TNC/Ameren Stipulation. (*See* Tr. at 199-1053.) Accordingly, the TNC/Ameren Stipulation is uncontested.

Under the TNC/Ameren Stipulation, The Nature Conservancy and Ameren have agreed upon a preferred "Stipulated Route" (hereafter the "TNC/Ameren Stipulated Route") from Meredosia to southern Schuyler County (*i.e.*, the TNC/Ameren Stipulated Route covers a portion, but not all, of the Meredosia to Ipava segment). (*See* TNC/Ameren Stipulation at 1, 3.) The TNC/Ameren Stipulated Route avoids both the Spunky Bottoms Preserve, associated uplands in Brown County, and the IDOT Wetland Mitigation Bank site, while in large part tracking a portion of the Ameren's original Alternate Route. (*See id.*)

Because the TNC/Ameren Stipulated Route is in large part co-terminus with the Ameren Alternate Route that has been a part of the case since the day of Ameren's initial

filing, the evidentiary record in this case contains substantial information about the feasibility and desirability of that route. (*See generally* the Direct and Rebuttal Testimony of Jeffrey Hackman, Donell Murphy, Rick Trelz, and Jerry Murbarger on behalf of Ameren (ATXI Exs. 3.0, 4.0, 5.0, 7.0, 12.0, 13.0, 15.0, 16.0).) That evidence is supplemented by the expert testimony of The Nature Conservancy's witnesses, which explains the substantial concerns with the portion of Ameren's Primary Route for the Meredosia to Ipava segment, as well as the portion of Ameren's Alternate Route that would impinge upon the IDOT Wetland Mitigation Bank site. (*See generally* Blodgett Direct Testimony; Walk Direct Testimony; Ward Direct Testimony.)

Accordingly, if the Commission chooses to approve Ameren's Petition, the record contains substantial evidence to support the Commission's approval of the TNC/Ameren Stipulated Route for a portion of the Meredosia to Ipava segment of the proposed transmission line.

III.

OVERALL NEED FOR THE PROPOSED FACILITIES

The Nature Conservancy takes no position regarding the overall need for the Ameren Illinois Rivers Transmission Project. However, to the extent that the Commission determines that there is a need for the Meredosia to Ipava segment of that Project, the evidentiary record supports the adoption of the TNC/Ameren Stipulated Route that is the subject of the TNC/Ameren Stipulation.

IV.

RECOMMENDED ROUTE OF THE TRANSMISSION LINE

C. MEREDOSIA TO IPA VA

The Nature Conservancy and Ameren have entered into the TNC/Ameren Stipulation, which identifies the TNC/Ameren Stipulated Route as the preferred route for a portion of the Meredosia to Ipava transmission line. The evidentiary record supports that TNC/Ameren Stipulated Route. Consistent with the TNC/Ameren Stipulation, statements herein directed at other routes are submitted as a contingency, to preserve arguments in the event that the Commission does not adopt the TNC/Ameren Stipulated Route. (*See* TNC/Ameren Stipulation (TNC Ex. 4.1) at ¶ 9.)

The Nature Conservancy explained the negative environmental and ecological impacts of the Meredosia to Ipava portions of the Ameren Primary Route and the Ameren Alternate Route in its direct testimony. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at 2:12-21, 3:47-19:446; Walk Direct Testimony, TNC Ex. 2.0 at 3:39-29:667; Ward Direct Testimony, TNC Ex. 3.0 at 4:59-17:336.) Ameren's proposed Primary Route would locate a portion of the line across land known as the Spunky Bottoms Preserve in Brown County, Illinois. The Spunky Bottoms Preserve is a mosaic of restored floodplains and uplands, comprised of land owned in fee by The Nature Conservancy, as well as privately owned land subject to a conservation easement held by The Nature Conservancy. Both The Spunky Bottoms Preserve and the surrounding land have great ecological value that would be impaired by siting the transmission line along the Primary Route. (*See id.*)

Ameren's proposed Alternate Route would intersect the IDOT's Wetland Mitigation Bank located in northeastern Brown County, Illinois. (*See* Blodgett Direct

Testimony, TNC Ex. 1.0 at 17:385-386.) The Wetland Mitigation Bank is a 1,600 acre tract that has been returned to a combination of floodplain forest, wet shrubland, emergent wetland (marsh), and open water environments. (*See* Walk Direct Testimony, TNC Ex. 2.0 at 18:395-396.) Siting the line along the Alternate Route would not only violate the express terms of the bank instrument, which prohibit utility lines (*see id.* at 19:411-418.), but would also disturb and degrade IDOT's Wetland Mitigation Bank and would reverse the ecological progress that has been made in restoring natural habitats there. (*See* generally Blodgett Direct Testimony; Walk Direct Testimony; Ward Direct Testimony.)

To address the environmental and ecological issues associated with Ameren's proposed routes and to narrow the contested issues in this proceeding, The Nature Conservancy engaged in productive negotiations with Ameren. (*See* Blodgett Rebuttal Testimony at 3:46-47.) The result of those negotiations is the TNC/Ameren Stipulation, which was filed by Ameren on April 11, 2013 and admitted into the evidentiary record without objection on May 14, 2013 (*see* Ameren Stipulation Ex. 3.0; Tr. at 380) and again without objection on May 15, 2013 (*see* TNC Ex. 4.1; Tr. at 548). Under the TNC/Ameren Stipulation, The Nature Conservancy and Ameren have agreed upon a preferred TNC/Ameren Stipulated Route from Meredosia to southern Schuyler County. The TNC/Ameren Stipulated Route avoids both the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank site. (*See* Blodgett Rebuttal Testimony, TNC Ex. 4.0 at 2:26-4:58.)

There is support in the record for the adoption of the TNC/Ameren Stipulated Route and the Stipulated Route is preferred over the other routes that have been

suggested in this proceeding. (*See id.* at 3:52-4-58.) Accordingly, The Nature Conservancy has withdrawn its support for other routes and supports the Stipulated Route. (*See id.*)

1. LENGTH OF THE LINE

While Ameren's Alternative Route is not the absolute shortest line route among various alternatives, it is shorter than the Ameren Primary Route, to which The Nature Conservancy strongly objects because of its highly negative ecological effects. (*See* Direct Testimony of Greg Rockrohr, Staff Ex. 1.0 at 33:709-713; *see also generally* Blodgett Direct Testimony, TNC Ex. 1.0 at 2:12-21, 3:47-19:446; Walk Direct Testimony, TNC Ex. 2.0 at 3:39-29:667; Ward Direct Testimony, TNC Ex. 3.0 at 4:59-17:336.) Notably, no party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of length of the line. Further, to the extent that the TNC/Ameren Stipulated Route results in a line that is slightly longer than other alternatives, that difference is justified by the important and significant improvements in the line route design from an environmental and ecological perspective that is achieved by the TNC/Ameren Stipulated Route. (*See* Blodgett Rebuttal Testimony, TNC Ex. 4.0 at 2:26-4:58.)

2. DIFFICULTY AND COST OF CONSTRUCTION

No party, including Staff, objected to the TNC/Ameren Stipulated Route based upon concerns with either the difficulty or cost of construction. Regarding cost of construction, according to Ameren's Rebuttal Testimony, it appears that the estimated cost for the route including the Ameren TNC/Ameren Stipulated Route is slightly higher than the Ameren Primary Route and the Ameren Alternate Route without the

TNC/Ameren Stipulated Route modification. (*See* Ameren Ex. 16.1 at 5.) However, in the context of the overall project, this cost estimate difference is quite small and is off-set by the important and significant improvements in the line route design from an environmental and ecological perspective that is achieved by the TNC/Ameren Stipulated Route. (*See* Blodgett Rebuttal Testimony, TNC Ex. 4.0 at 2:26-4:58.)

3. DIFFICULTY AND COST OF OPERATION AND MAINTENANCE

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of difficulty and cost of operation and maintenance.

4. ENVIRONMENTAL IMPACTS

Due to environmental and ecological concerns with Ameren's proposed transmission lines, The Nature Conservancy entered into the TNC/Ameren Stipulation with Ameren, identifying the TNC/Ameren Stipulated Route as the preferred route for a portion of the Meredosia to Ipava transmission line. (*See* Ameren Stipulation Ex. 3.0 at 1, 3; TNC Ex. 4.1 at 1, 3.) The evidentiary record supports that TNC/Ameren Stipulated Route. (*See generally* the Direct and Rebuttal Testimony of Jeffrey Hackman, Donell Murphy, Rick Trelz, and Jerry Murbarger on behalf of Ameren (ATXI Exs. 3.0, 4.0, 5.0, 7.0, 12.0, 13.0, 15.0, 16.0).) Consistent with the TNC/Ameren Stipulation, statements herein directed at other routes are submitted as a contingency to preserve arguments in the event that the Commission does not adopt the TNC/Ameren Stipulated Route.

**The Spunky Bottoms Preserve Should Be Protected And, For That Reason,
The Ameren Primary Route Is Not A Viable Route.**

The Nature Conservancy explained the negative environmental and ecological impacts of the Ameren Primary Route in its direct testimony. Siting Ameren's transmission line along the Ameren Primary Route would disturb and degrade natural habitats at the Spunky Bottom Preserve. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at 3:47-16:363; Walk Direct Testimony, TNC Ex. 2.0 at 3:39-16:340; Ward Direct Testimony, TNC Ex. 3.0 at 6:100-13:238.) Heavy equipment needed for construction of the power line and associated activities would directly and negatively impact restored natural habitats at Spunky Bottoms, stressing and destroying native plants, both by design and as an unintended by-product of the construction. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at 10:212-220.) Stresses to the natural plant communities likely would contribute to invasions by undesirable plant species, thereby requiring additional monitoring and additional remedial stewardship to limit this secondary wave of damage. (*See id.*) If established in the footprint of the construction, invasive plants could threaten restored natural communities well beyond the power lines. (*See id.*)

In addition, construction activities likely would disturb the normal activities of many animal species, potentially leading to disruptions of their life cycles, abandonment of the immediate construction area (and potentially the entire Spunky Bottoms Preserve), and reduced fitness and even unnatural mortalities. (*See id.* at 10:220-226.) In short, construction of Ameren proposed Primary Route would have significant immediate negative ecological impacts and likely would undermine the core of the Spunky Bottoms Preserve restoration effort. (*See id.*)

In the long-term, the presence of the transmission line almost certainly would transform the habitat in ways that undermine the floodplain restoration at the Spunky Bottoms Preserve. (*See id.* at 10:230-11:239.) Both the physical presence of the power line and the habitat fragmentation that results will alter and/or disrupt some animals' behaviors and contribute to decreased fitness and even unnatural mortality. (*See id.*) As discussed above, habitat fragmentation results in increased invasive plant species that are very difficult to control. (*See id.*) The plant species present will greatly influence the animal species in their habitat selection. (*See id.*) Although the footprint of the line and associated easement may appear small, the effects of the line once constructed on the preserve go well beyond the footprint.

Access for ongoing maintenance would disrupt normal activities of many animal species, again with the potential of disrupting life cycles, causing abandonment of the area and potentially the Preserve, and contributing directly or indirectly to decreased fitness and even unnatural mortalities. (*See id.* at 11:243-12:264.) Control of vegetation under the lines would likely alter natural plant communities. Such alterations could promote invasive species and could threaten native plant and animal communities in the footprint, throughout the Spunky Bottoms Preserve and beyond. (*See id.*)

The presence of a high voltage power line running across the Spunky Bottoms Preserve -- and the periodic maintenance that goes along with that -- would have a highly detrimental effect on the natural beauty and tranquility that exists at Spunky Bottoms. (*See id.*) Currently, in addition to being a property of high ecological value as a home for numerous important animals and plants, the Spunky Bottoms Preserve offers a highly valued setting for limited human activity, such as canoeing and kayaking, fishing, bird

watching, and hiking. (*See id.*) The construction, existence, and ongoing maintenance associated with a high voltage transmission line would be detrimental to these uses. (*See id.*)

The TNC/Ameren Stipulated Route avoids all of these problems with the Ameren Primary Route and, therefore, is clearly preferred. (*See* Blodgett Rebuttal Testimony, TNC Ex. 4.0 at 2:26-4:58.)

The Primary Route Is Also Not Viable Based On Its Impacts On Bluff/Upland Forest Resources.

Many of the same potential negative impacts, including stressing or destroying native plants, the introduction of undesirable plant and animal species, and disruption of normal animal behavior, contributing to decreased fitness and mortality, would result from construction of the power line near upland forest bluff habitat near the Spunky Bottoms Preserve. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at 14:319-336). The Nature Conservancy holds conservation easements over these lands, the terrain of which is prone to erosion when native plant communities are disturbed. (*See id.* at 15:338-350) Accordingly, erosion during construction and subsequent maintenance/operation of the power line is a major concern and makes the Primary Route not viable for its impact on the upland bluff habitat. (*See id.*)

The Portion Of The Ameren Alternate Route That Would Cross The Wetland Mitigation Bank Is Not A Viable Route.

Siting Ameren's transmission line along the Alternate Route would disturb and degrade the Illinois Department of Transportation's wetland mitigation bank. From an environmental and ecological perspective, the wetland mitigation bank site is especially significant both for its size and location. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at

16:366-28:415; Walk Direct Testimony, TNC Ex. 2.0 at 16:342-20:433; Ward Direct Testimony, TNC Ex. 3.0 at 13:240-308.) It is rare to find over 1,600 acres of former floodplain that can be restored to natural hydrologic function, thereby contributing to a more natural river hydrology with associated reductions in flood damages -- that is, the wetland can retain water that would otherwise flood farm fields and developed areas. (*See* Blodgett Direct Testimony, TNC Ex. 1.0 at 17:387-391.)

The Wetland Mitigation Bank site also provides numerous other ecosystem services including processing and recycling nutrients and sediments, improving water quality, and affording important habitats for native plant and animal species, and providing opportunities for education, research, recreation, and compatible economic development. (*See id.* at 17:392-401.) In recognition of its unique environmental characteristics, the Wetland Mitigation Bank site was designated by the Federal Highway Administration as an Exemplary Ecosystem Initiative in 2004. (*See id.*)

Construction and maintenance of the proposed line would reverse the progress that has been made in achieving the Wetland Mitigation Bank's goals. Construction of the proposed line would result in disturbance and destruction of wetland and other habitats within the right-of-way. Through maintenance of the line, the character of habitat within the right-of-way likely would be altered indefinitely. (*See* Walk Direct Testimony, TNC Ex. 2.0 at 19:422-20:433.) Because of vegetation maintenance under the line, typically accomplished via chemical or mechanical means, certain invasive plants that thrive under recently-disturbed conditions may spread along the right-of-way, invade wetlands adjacent to the line, and degrade their character. (*See id.*) Additionally, the line would be a collision hazard for birds and other wildlife utilizing the mitigation

bank. (*See id.*) Some wildlife would avoid habitat under or near the line, diminishing an intended benefit of the restored wetland habitat. (*See id.*)

The TNC/Ameren Stipulated Route avoids all of these problems with the Ameren Primary Route and those portions of Ameren's Alternate route that affect the IDOT Wetland Mitigation Bank site, and, therefore, is clearly preferred. (*See Blodgett Rebuttal Testimony, TNC Ex. 4.0 at 2:26-4:58.*)

5. IMPACTS ON HISTORICAL RESOURCES

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of impact on historical resources issues.

6. SOCIAL AND LAND USE IMPACTS

Please see the discussion in Section IV.C.4 above.

7. NUMBER OF AFFECTED LANDOWNERS AND OTHER STAKEHOLDERS AND PROXIMITY TO HOMES AND OTHER STRUCTURES

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of number of affected landowners and other stakeholders and proximity to homes and other structures. Importantly, The Nature Conservancy was careful in determining the northern extent of the TNC/Ameren Stipulated Route; The Nature Conservancy has not taken a position regarding impacts -- including those relating to number of affected landowners and other stakeholders and proximity to homes and other structures -- beyond the northern edge of the IDOT Wetland Mitigation Bank in southern Schuyler County.

8. PROXIMITY TO EXISTING AND PLANNED DEVELOPMENT

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of proximity to existing and planned development. As explained above in section IV.C.7, The Nature Conservancy was careful in determining the northern extent of the TNC/Ameren Stipulated Route; The Nature Conservancy has not taken a position regarding impacts for any existing or planned development beyond the northern edge of the IDOT Wetland Mitigation Bank in southern Schuyler County.

9. COMMUNITY ACCEPTANCE

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of lack of community acceptance. The Nature Conservancy believes that, as evidenced by the designation of Spunky Bottoms Preserve as an Illinois Natural Areas Inventory Site and the IDOT Wetland Mitigation Bank site as an Exemplary Ecosystem Initiative, there is demonstrated public acceptance and support for the TNC/Ameren Stipulated Route's avoidance of the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank. (*See* Walk Direct Testimony, TNC Ex. 2.0 at 10:208-215; Blodgett Direct Testimony, TNC Ex. 1.0 at 17:385-401.)

10. VISUAL IMPACT

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of visual impact concerns. Running high voltage transmission lines across these open, natural areas obviously would have a *highly negative* visual impact -- that negative impact is avoided by the TNC/Ameren Stipulated Route.

11. PRESENCE OF EXISTING CORRIDORS

No party, including Staff, objected to the TNC/Ameren Stipulated Route on the basis of presence of existing corridors.

VII.

OTHER -- CONCLUSION

In an effort to address The Nature Conservancy's serious concerns with Ameren's Primary and Alternate Routes and to narrow the contested issues in this proceeding, The Nature Conservancy entered into the TNC/Ameren Stipulation with Ameren, supporting a preferred TNC/Ameren Stipulated Route from Meredosia to southern Schuyler County. The TNC/Ameren Stipulated Route avoids running the proposed transmission line across both the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank site, both of which are sites of important environmental and ecological value.

Accordingly, if the Commission chooses to approve Ameren's Petition, the record contains substantial evidence to support the Commission's approval of the TNC/Ameren Stipulated Route for a portion of the Meredosia to Ipava segment of the proposed transmission line.

Respectfully submitted,

THE NATURE CONSERVANCY

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