

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| 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, to Construct, Operate and Maintain an 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 |
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**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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OF THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter.

I. INTRODUCTION

Staff presents a response primarily to arguments made by Ameren Transmission Company of Illinois (“ATXI” or “Company”) in its Initial Brief (“IB”). For the sake of brevity, Staff will not address all arguments made by the Company or interveners. To the extent that Staff remains silent in this Reply Brief on any position previously taken, such silence should not be construed a waiver or withdrawal of said previous positions.

IV. LEAST-COST AND THE PROPOSED TRANSMISSION LINE ROUTES

ATXI argues that:

“Least cost” is not simply the lowest dollar cost associated with construction and maintenance, as there are other factors that must be considered when determining which route is "least cost." [citations] Under Staff’s analysis, which is based only on length of line and estimated number of dead-end structures, the best route would be a straight line between points A and B because it would be shortest and, consequently, have the least dollar cost. But the true cost of such a route might be great, if it ignored the sensitivities of the communities and individuals it would impact.

ATXI IB at 21 (citation omitted).

This mischaracterizes Staff’s position. Staff endorses the proposition that any route that the Commission considers should take the impact of the transmission line on landowners and communities into account. However, in situations where every route alternative has similar impacts on landowners and communities (or at least impacts that cannot be determined to be dissimilar in an abbreviated proceeding), the Commission should select the shortest and straightest route, since a shorter route would be less costly initially, and ongoing expenses associated with a shorter route would also be less costly. Staff Ex. 1.0(R) at 20. Furthermore, shorter transmission lines affect less farmland, an outcome ATXI concedes is desirable. Tr. at 243; see *also* ATXI Ex. 5.2 (Agricultural Impact Mitigation Agreement between ATXI and Illinois Department of Agriculture, which addresses concerns regarding damage to farmland and crops).

ATXI cites the Commission’s Order, Illinois Power Company and Ameren Illinois Transmission Company Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406 of the Illinois Public Utilities Act, to construct, operate and maintain new 138,000 volt electric lines in LaSalle County, Illinois, ICC Docket No. 06-

0706 (March 11, 2009)(hereinafter “La Salle County Order”) for the proposition that: “the proper determination of least cost is not simply a financial analysis, but involves a comprehensive consideration and balancing of the overall costs and externalities against the benefits of the route proposals.” ATXI IB at 21. ATXI’s reliance on this is slightly disingenuous, since the Commission specifically characterized this as a proposition to which “[a]ll of the parties appear[ed] to agree[,]” rather than a finding by the Commission. La Salle County Order at 52.

In light of the abbreviated nature of this proceeding, Staff has been compelled to confine its analysis to determining which viable routes appear to be the least cost in monetary terms, and explain the reasons for that determination. Staff Ex. 1.0(R) at 21. If ATXI and interveners were inclined to question Staff’s determination, Staff urged them to explain why they believe Staff was not correct; again, this was done to ensure that the Commission had the most comprehensive possible record given the circumstances. Id. Staff is still not aware of evidence presented in this proceeding that demonstrates its conclusions presented in direct testimony were incorrect. Additional discussion in this regard is presented in the following discussions for each route segment.

Further, it should be noted that where a statute does not specifically place any burden of proof, as Section 8-406.1 does not, courts have uniformly imposed on administrative agencies the common-law rule that the party seeking relief has the burden of proof. Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53; 416 N.E.2d 1082, 1088; 1981 Ill. Lexis 229 at 14; 48 Ill. Dec. 560 (1981). Accordingly, ATXI has the burden of showing that each segment is least cost.

A. Mississippi River – Quincy

ATXI recommends use of its Alternate Route, with a modification as the transmission line enters the Southeast Quincy Substation, so that the transmission line would turn and follow the second alternative route presented by Intervenor N. Kohl Grocer (Kohl) until reaching the Southeast Quincy Substation. ATXI IB at 24. Both Kohl and Matt Holtmeyer Construction (MHC) entered into a stipulation with ATXI to support the route that ATXI refers to as its Rebuttal Recommended Route. Id. Staff considers ATXI's Rebuttal Recommended Route to be superior to ATXI's Alternate Route, since it is shorter and would not impact MHC's development plans, but inferior to Kohl's second alternative route, which would be cost approximately \$3 million less and also would not impact MHC's development plans. See ATXI Ex. 13.2 at 2; ATXI Ex. 16.3 (Rev. at 1).

ATXI first claims that “[o]nly Staff ..., in testimony, expressed support for another route –NKG’s Secondary Alternate Route[.]” ATXI IB at 25. This is true, but entirely irrelevant, since ATXI and the only proponents of alternative routes other than Staff stipulated to the use of an alternative route. Moreover, stipulating to a route does not make it least-cost; it merely makes it acceptable to the stipulating parties. If ATXI and the stipulating parties had, for example, agreed to a route that went from the Mississippi River to Quincy by way of the Wisconsin state line, it certainly would not be least cost, regardless of how favorably all parties might view it.

ATXI concedes that Staff recommended route would cost \$3 million less than the route to which ATXI stipulated. ATXI IB at 25. However, ATXI asserts that:

[Kohl's second alternative route, recommended by Staff] will likely require the transmission line to cross an existing transmission line at least two times to avoid displacing residences, may pose problems with respect to right-of-way width near Highway 57, and may pose reliability issues because it would be located on adjoining rights-of way (or, according to

NKG, on double-circuit structures). [citation] Alleviation of these concerns could increase the cost of the route. As a result, the Stipulated Route is the best option for this portion of the Project.

Id. (emphasis added; citation omitted).

This passage is illuminating. While conceding that all else equal, Staff's recommendation would, in fact, cost \$3 million less to construct than its own proposal, ATXI argues that Staff's proposal "may" or "will likely" result in a parade of horrors which "could" increase the cost of the route. However, ATXI is unable to say how much more costly Staff's proposal would be if any of these contingencies were in fact to occur, and it has not in any case demonstrated that they will.

ATXI's failure of proof here is significant. As noted above, ATXI, and no other party, has the burden of showing that its proposal is in fact the least-cost. All of the evidence here supports the proposition that, excepting some highly contingent "coulds" and "maybes", Staff's recommended route is the least cost. ATXI has failed to meet its burden and its proposal cannot be adopted.

ATXI claims that use of Kohl's second alternative route proposal would result in displacement of one residence. ATXI IB at 28. Staff, however, is not convinced that any displacement would be required. ATXI correctly states that, in most cases, it will be able to build the Project along Intervenor proposed routes, if that is what the Commission orders. ATXI IB at 3. Since Section 8-406.1 of the Act requires use of the least cost means, Staff Ex. 1.0(R) at 5, and given the fact that Kohl's second alternative route represents the overall least cost means for this segment, the Mississippi to Quincy segment should be constructed using Kohl's second alternative route.

B. Quincy – Meredosia

ATXI recommends use of a hybrid route (Rebuttal Recommended Route) that combines elements of its primary and alternate routes. ATXI IB at 30. Staff proposed this hybrid route as an alternative route should ATXI demonstrate that Adams County Property Owners (“ACPO”) first alternative route (“Alternative Route 1”) cannot be used. Staff Ex. 1.0(R) at 29. ATXI indicates that costs for using the hybrid route would be approximately \$9.1 million greater than using ACPO’s Alternate Route 1. ATXI Ex. 16.3 (Rev.) at 2.

While, as noted above, ATXI is compelled to concede that ACPO’s Alternate Route 1 is “perhaps lower cost in base dollar terms”, ATXI IB at 31, ATXI claims ACPO’s Alternate Route 1 would traverse an existing residential area near Highway 172, requiring the displacement of at least six assumed residences, and require approximately 40 additional acres of tree removal. Id. Though ATXI claims in its Initial Brief that ACPO’s Alternate Route 1 would require displacement of six assumed residences, ATXI IB at 36, Ms. Murphy states in rebuttal testimony that ACPO’s Alternate Route 1 would place two residences within 75 feet of the centerline of the right-of-way; not six. ATXI Ex. 13.0C (2nd Rev.) at 16.

Staff is not convinced displacement of any residences would be necessary if ACPO’s Alternate Route 1 were used. It strains credulity that, at this stage in the proceeding, ATXI still is not certain which structures are occupied residences, or how many would need to be displaced if a given route were chosen. ATXI notes that ACPO’s Alternate Route 1 parallels an existing 138 kV line, and again alleges, without establishing, that doing so for this segment would create any problems or reliability

concerns. See ATXI IB at 31 (ATXI states that use of a right of way adjacent to a 138kV line “may present reliability, operational and maintenance [sic] as discussed above[.]”)

Therefore, the Commission should not consider this to be a valid reason to reject ACPO’s Alternate Route 1, which Staff continues to recommend as the lowest cost route for the Quincy to Meredosia segment. However, if the Commission determines that ATXI should use its Rebuttal Recommended Route (the hybrid route) for constructing the transmission line, Staff would recommend that at the location the hybrid route first crosses ACPO’s Alternate Route 1 as it heads east from Quincy, the Commission order ATXI to use ACPO’s Alternate Route 1 from that point for the remaining distance to the Meredosia substation site. ATXI Ex. 13.3. Staff believes that such a combination of the hybrid route and ACPO’s Alternate Route 1 would likely result in construction costs roughly equivalent to the cost of using ACPO’s Alternate Route 1, while avoiding much of the additional tree clearing and the existing residential area near Highway 172 to which ATXI referred.

C. Meredosia – Ipava

ATXI recommends use of its Alternate Route, modified in order to avoid the environmentally sensitive areas of the Spunky Bottoms Preserve, and the IDOT Wetland Mitigation Bank, about which The Nature Conservancy (“TNC”) raised concern. ATXI IB at 38. Staff continues to recommend use of TNC’s Route 1, which would also avoid the environmentally sensitive areas identified above through a modification of ATXI’s Alternate Route, but resulting in a shorter transmission line costing approximately \$5.7 million less than ATXI’s Rebuttal Recommended Route. ATXI IB at 41 and Figure 3.

ATXI states TNC Route 1 would likely result in the displacement of a residence, conflict with a greater number of center-pivot irrigation systems, and parallel an existing 138kV line. ATXI IB at 39 (emphasis added). However, Staff does not agree that the use of TNC Route 1 would necessitate displacement of any residences. Staff's review showed that ATXI should be able to mitigate impacts to center-pivot irrigation systems through placement of structures, Tr. at 244, and ATXI appears to agree. ATXI Ex. 15.0 at 7; ATXI Ex. 16.0(Rev.) at 5. Finally, paralleling the existing 138 kV line would not pose a problem for the route. Staff Ex. 1.0(R) at 26. Furthermore, ATXI found TNC Route 1 had advantages beyond cost: it would reduce the number of residences within 150-feet of the centerline and require less tree removal. ATXI Ex. 13.0C (2d Rev.) at 22.

D. Meredosia – Pawnee

ATXI recommends approval of its Alternate Route as the best option for the portion of the Project between Meredosia and Pawnee. ATXI IB at 44. ATXI states: "MSCLTF submitted an alternative route proposal, but it was subsequently withdrawn in accordance with the Stipulation." *Id.* Staff agrees that MSCLTF apparently withdrew support for its alternative route proposal, but Staff disagrees that the proposed route itself, once submitted, was, or could be, withdrawn. In fact, Staff continues to support the route proposal that MSCLTF submitted as the shortest and least costly route for this segment. ATXI IB at 47 and Figure 4.

ATXI claims that there is no record evidence that the Stipulated Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. ATXI IB at 47. Staff points out, however, that longer lines cost more to construct and maintain than shorter lines. Staff EX. 1.0(R) at

20. Furthermore, ATXI only reason for rejecting MSCLTF's proposed alternative route is that it parallels an existing 138 kV line, which poses reliability concerns, including the fact that the existing lines must be removed from service during maintenance and that a single pole failure could result in outages to both lines. ATXI IB at 48. These claims regarding reliability are unsubstantiated. NERC standards treat lines that are parallel on non-overlapping rights-of-way the same as lines that are separated by several miles. Tr. at 623. For the Meredosia to Pawnee segment, Staff recommends use of the alternative route MSCLTF proposed as the least costly route, followed by ATXI's Primary Route with the modification proposed by Pearce. Staff IB at 19-20.

E. Pawnee – Pana

ATXI recommends approval of its Second Alternate Route as the best option for the Pawnee and Pana segment of the project, and Staff agrees that ATXI's Second Alternate Route would be the best choice if the Commission determines to include this segment in a certificate as part of this proceeding. ATXI IB at 51. However, 345 kV transmission lines already connect Pawnee to Kincaid and Kincaid to Pana, and it is not apparent to Staff that ATXI needs to construct the Pawnee-Pana segment. Staff Ex. 1.0(R) at 34 and 37; Staff IB at 40-41. A Kincaid-Mt. Zion segment for the Illinois Rivers Project instead of ATXI's proposed Pawnee-Pana-Mt. Zion segments could provide the same benefit to the Decatur area as ATXI's proposal, but at a significantly lower cost due to the shorter distance.¹ Staff IB at 40-41. Neither ATXI nor MISO studied the Kincaid-Mt. Zion option. Id. Given that Section 8-406.1 of the Act requires that, to grant

¹ Examination of ATXI Ex. 4.2 leads Staff to conclude that a Kincaid-Mt. Zion route would likely result in a transmission line that is at least 20 miles shorter than a Pawnee-Pana-Mt. Zion line.

a certificate, the Commission must find that, based upon ATXI's petition and the evidentiary record, the project is the least cost means of satisfying the objectives that initiated the project, and given the fact that neither ATXI nor MISO studied the Kincaid-Mt. Zion option, which appears to be a lower cost method to satisfy the project's objectives, Staff recommends that the Pawnee-Pana segment be excluded from any certificate granted in this proceeding. Staff IB at 41.

F. Pana – Kansas

1. Need for Mt. Zion Substation

Staff is satisfied with ATXI's demonstration of need to install a substation on the south side of the Decatur area (ATXI IB at 55), and for that reason Staff does not recommend that the Commission adopt any routing directly between Pana and Kansas that excludes a substation for Decatur or that would place the 345 kV line south of Lake Shelbyville. Staff IB at 24.

2. Location of Mt. Zion Substation

ATXI demonstrated that locating the new Mt. Zion substation directly east of Pana would result in insufficient voltage support under certain contingencies. ATXI IB at 59-60. Though Staff agrees locating the substation as far south as Pana would not be a viable solution, ATXI has not demonstrated that constructing the proposed transmission line in the segment from Pana to Mt. Zion is the least costly solution to providing an additional 345 kV transmission line across central Illinois and alleviating forecasted deficiencies in the Decatur area. Staff Ex. 1.0(R) at 3. Staff continues to believe that the location of the new Mt. Zion Substation should be determined after simultaneously considering both the 345 kV transmission line routing and the routing for the connecting

138 kV transmission line routing to avoid difficult routing choices for the 138 kV connections. Staff Ex. 1.0(R) at 17-18. Staff continues to recommend that the Commission omit the Mt. Zion substation from any certificate it grants in this proceeding so that the location for ATXI's Mt. Zion substation can be determined in the same proceeding as the routing for the 138 kV connections.

Staff notes that MISO expressed concern regarding possible delay in project completion if the Commission excludes segments of the project from the certificate granted in this proceeding. MISO IB at 12. However, as previously stated, Staff believes excluding the three segments, Pawnee-Pana, Pana-Mt. Zion, and Mt. Zion-Kansas is necessary because: (1) ATXI did not demonstrate that it needs the Pawnee-Pana and Pana-Mt. Zion segments if it instead could construct a far shorter Kincaid-Mt. Zion segment to accomplish the same purpose; (2) ATXI should select a location for the Mt. Zion Substation after also considering the location of the necessary 138 kV connecting transmission lines. Furthermore, completion of the MISO MVP #11 need not be delayed since it would not be completed until the 138 kV connections are completed, and those connections will require an additional proceeding at the Commission. Staff Ex. 1.0(R) at 18.

3. Route Location

b. Pana – Mt. Zion

ATXI's recommended route for the Pana to Mt. Zion segment is the route designated in ATXI's application as the Primary Route. ATXI IB at 65. If the Commission were to grant ATXI a certificate that includes this segment, Staff agrees that ATXI's primary route would be the best choice of the routes presented, although Staff

recognizes some advantages attributable to a route that would parallel Highway 51 from Assumption northward. Staff IB at 28. In particular, a Pana-Mt. Zion route that would parallel Hwy 51 would overlap the highway right-of way so that the amount of private land impacted is reduced. Tr. at 407-408. However, as explained above, Staff does not believe ATXI has demonstrated that Pana-Mt. Zion line segments should be constructed, since a much shorter option for a new 345 kV line from Kincaid to Mt. Zion is available.

c. Mt. Zion – Kansas

ATXI recommends that the Commission approve the route for the Mt. Zion–Kansas segment originally designated as MCPO Potential Route 1, ATXI IB at 72. If the Commission were to grant ATXI a certificate in this proceeding that includes this segment, Staff believes that either MCPO Potential Route 1 or ATXI’s alternate route should result in similar costs. Staff Ex. 1.0(R) at 46. ATXI, with Ex. 16.3(Rev), provides that the cost of using MCPO Potential Route 1 would result in the lower cost, and therefore Staff would does not disagree with ATXI’s Rebuttal Recommended Route. Staff IB at 32. However, as explained above, Staff believes that any certificate that the Commission grants should exclude the .Mt. Zion substation, since its location should be determined only after study and careful consideration of both 345 kV and 138 kV transmission line routings. Since determining a Mt. Zion–Kansas routing depends upon the location of the Mt. Zion Substation, Staff recommends that the Mt. Zion –Kansas segment be excluded from any certificate that the Commission grants in this proceeding.

G. Kansas – Indiana State Line

For the Kansas to State line portion of the Project, ATXI recommends approval of its Alternate Route. ATXI IB at 78. Staff continues to recommend the second route alternative proposed by Stop the Power Line Coalition (“SPLC”), since it appears to be the lowest cost route to construct. ATXI IB at 81. The eastern most third of the route proposed by SPLC and ATXI’s Alternate Route are the same. ATXI Ex. 13.8 at 1. ATXI’s reason for not selecting the second route alternative from SPLC is that it could require condemnation of an occupied structure, it would pass through a planned gas storage field potentially interfering with operation and maintenance of the associated facilities, and .more of this route would parallel an existing 138 kV transmission line than would ATXI’s alternate route. ATXI IB at 80-81. If the Commission were to order ATXI to use the second route alternative proposed by SPLC, Staff is not aware of any occupied structures that would require condemnation, any negative affect the line would have on a yet-to-be constructed gas storage field, or any additional maintenance costs due to paralleling an existing 138 kV transmission line. Staff finds that ATXI’s Alternate Route is the second best choice for this segment, since Staff is unaware of any confirmed obstacles associated with the second route alternative from SPLC, or any reason the Commission should instead select a route having an estimated \$1.5 million greater cost. Staff IB at 34-35.

H. Sidney – Rising

ATXI recommends its Primary Route between Sidney and Rising, and Staff agrees with that recommendation. ATXI IB at 86.

VIII. CONCLUSION

The Staff of the Illinois Commerce Commission recommends that the Commission grant ATXI a CPCN consistent with the limitations and qualifications expressed by Staff in its Initial Brief and this Reply Brief.

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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