

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

**REPLY BRIEF OF STOP THE POWER LINES COALITION, JDL BROADCASTING,
INC., TARBLE LIMESTONE ENTERPRISES, COLES COUNTY LANDOWNERS, AND
REED INTERESTS**

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Stop the Power Lines Coalition (“STPL”), JDL Broadcasting, Inc. (“JDL”), Tarble Limestone Enterprises (“Tarble”), Coles County Landowners (“CCL”), and the Reed Interests (“Reed”) submit this reply memorandum in support of their positions in this case.

Tarble, CCL, and Reed all support the location of the proposed Ameren Transmission Company of Illinois (“ATXI”) line in the segment between Mt. Zion and Kansas on either the route that is the subject of Stipulation No. 7 between ATXI and the Moultrie County Property Owners (the “ATXI-MCPO Stipulated Route”) or the original ATXI Alternate Route, which ATXI identified as its Rebuttal Recommended Route in its rebuttal testimony. *See* ATXI Ex. 13.1 (Rev.) (Page 7 of 9). Tarble, CCL and Reed all are opposed to construction of the line in this segment on ATXI’s original Primary Route which, based on the initial briefs, no other party in this proceeding now supports.

STPL, JDL and Tarble all support location of the proposed transmission line in the Kansas to Indiana state line segment on ATXI’s original Alternate Route. That route was

ATXI's preferred route in its rebuttal testimony, and subsequently was the subject of Stipulation No. 5 between ATXI and STPL, JDL, Tarble, Thrift-Thompson and the Edgar County Intervenors ("Kansas to State Line Stipulated Route"). STPL, JDL and Tarble all are opposed to the location of the transmission line in this segment on the original ATXI Primary Route. Based on the initial briefs, only one party, the Rural Clark and Edgar County Concerned Citizens ("RCECCC"), has indicated that it could support construction on the original Primary Route in this segment.

Tarble, CCL, and Reed all are adamantly opposed to an order approving construction of the proposed transmission line on certain segments of the project, but not the segments between Pawnee, Pana, Mt. Zion and Kansas. Similarly, STPL, JDL and Tarble all are adamantly opposed to entry of an order excluding approval of a route on the Kansas to the Indiana state line segment.

I. INTRODUCTION

Two parties have suggested that the Commission defer action on particular segments. The Staff has suggested that the Commission defer action and not issue a certificate of public convenience and necessity with respect to the segments of the route running from the Pawnee to Pana to Mt. Zion to Kansas segments because for various reasons, Staff is not persuaded that ATXI selected the best route. Staff Br. at 41. RCECCC has suggested that the Commission may want to defer action on the Kansas to Indiana state line segment, although its reasons are less clear, RCECCC suggested that "common sense and the totality of the record indicate it may be premature to issue a [c]ertificate to ATXI." RCECCC Br. at 6.

For the reasons set forth below, Tarble, CCL, and Reed all are adamantly opposed to concluding this proceeding with no decision on a route in the Pawnee to Pana to Mt. Zion to Kansas segments, and STPL, JDL and Tarble are adamantly opposed to deferring selection of a

route in the Kansas to Indiana state line segment. They believe it would be a miscarriage of justice to conclude this proceeding in that manner.

Like every other landowner who is a party to this proceeding, STPL, JDL, Tarble, CCL, and Reed have lived the last several years with the Sword of Damocles, in the form of a massive 345 kV transmission line, dangling over their heads and threatening their property and in many cases their livelihood and daily peace of mind. Most of the landowners who intervened in this proceeding, including but not limited to STPL, JDL, Tarble, CCL, and Reed, have invested significant emotional and financial capital in articulating, supporting and defending their positions in this proceeding. To walk away from this proceeding with no final answer concerning the location of the transmission line in their area would do these parties a grave disservice and mean that the financial and emotional toll they have incurred in this proceeding was all for naught.

If ATXI has failed to carry its burden of proof, then the Commission should deny its petition. But it ought not fall prey to the invitation of two parties to carve out segments of the route because two parties speculate there might possibly be a better route, without hard proof of what that better route is and why that route would better meet the public interest and satisfy the statutory criteria.

Like Staff and every other landowner in this proceeding, STPL, JDL, Tarble, CCL, and Reed all believe that use of the expedited procedures of Section 8-406.1 of the Public Utilities Act, 220 ILCS 5/8-406.1, for a massive infrastructure project like ATXI's 345 kV transmission line is unwise public policy, and does not allow adequate time to explore all routing issues or options or all facets of the project. However, unless and until the General Assembly amends or repeals Section 8-406.1, and the Governor signs that bill into law, Section 8-406.1 reflects the

public policy of the State of Illinois that the expedited procedures of Section 8-406.1 may be utilized for projects that are the size and scope of ATXI's project.

At the conclusion of his direct testimony, Staff Senior Electrical Engineer and witness Greg Rockrohr made a poignant and insightful point. Mr. Rockrohr testified:

Q. Do you believe the schedule for this proceeding allows for development of a complete and thorough record upon which the Commission can base its decision?

A. No, but 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 Ex. 1.0(R) at 54:1132 to 55:1144. Mr. Rockrohr was right. When the expedited procedures of Section 8-406.1 are utilized, every potential route may not be identified or fully vetted, and every groundball may not be run out. That is a terrible way to review a project of this magnitude. But that is what the General Assembly has determined is appropriate.

Staff and Intervenors were given a deadline to identify alternate routes by December 31, 2012. *See* December 14, 2012 ALJ Order. The deadline for the Intervenors to submit alternate routes was extended to February 13, 2013. *See* Jan. 25, 2013 ALJ Order.¹ Neither Staff nor

¹ STPL objected to both the original date by which alternate routes were required to be submitted as well as to the ALJs' requirement that Staff and Intervenors submit designations for alternate routes. Motion to Amend Case Management Plan to Either Eliminate the December 31, 2012 Filing Requirement or Extend the Time for Same (filed 12/26/12). STPL's motion was denied, and STPL withdrew its Petition for Interlocutory Review when it was granted leave to file alternate routes. Motion to Withdraw Petition for Interlocutory Appeal of Stop the Power Lines Coalition (filed 1/25/13). Neither Staff nor RCECCC objected to the ALJs' order concerning alternate routes. For better or worse, the ALJs' order concerning submittal of alternate routes governs this proceeding and is the law of the case.

RCECCC identified an alternative route. But now, after all of the evidence is in, Staff has suggested that routes not be selected because there might possibly be a better route in the Pawnee to Pana to Mt. Zion to Kansas segments, and RCECCC has suggested that no route be approved for the Kansas to Indiana state line based on some vague suggestion that RCECCC has not had time to fully vet the options.²

The efforts of these two parties to derail the issuance of a final order bringing finality to this case and affected landowners should be rejected in their entirety. Any other result would be a disservice to all who participated in this case, and would be a miscarriage of justice.

IV. LEAST-COST AND PROPOSED TRANSMISSION LINE ROUTES

F. Pana-Kansas

1. Need for Mt. Zion Substation

While the Moultrie County Property Owners (“MCPO”) initially argued that the Mt. Zion substation was not necessary and Staff initially questioned the need for the substation, no party in this proceeding now contends that the Mt. Zion substation is unnecessary. MCPO has dropped its opposition, and now agrees that construction of the Mt. Zion substation is appropriate. Stipulation 7 and MCPO Initial Br. at 13. Staff acknowledged in its Initial Brief that “there is a need for such substation.” Staff Initial Br. at 24.

2. Location of Mt. Zion Substation

Staff’s Initial Brief suggests that Staff believes the Mt. Zion substation should be located further south because Staff theorizes that it “is more economical for AIC to extend two 138 kV lines further south to the 345 kV north to Mt. Zion.” Staff Initial Br. at 24. While Staff mentions the Village of Mt. Zion’s alternative substation location south of the proposed site, Staff does not

² This is a rather peculiar suggestion coming from a party who conducted absolutely no discovery in this case and tendered precious little in the way of direct testimony.

endorse this site, presumably because Staff concludes later in its brief that “use of the Village’s suggested alternative site would likely be more costly than use of ATXI’s suggested substation site and primary route.” *Id.* at 28.

Staff has not identified either an alternative location for the substation or an alternate route to that substation. Staff’s suggestion that there might possibly be a more economical location for the substation is, at this stage of the proceeding, unhelpful and irrelevant and should be disregarded.

3. Route Location

a. Pana-Kansas (if Mt. Zion substation deemed unnecessary)

As noted above, no party in this proceeding contends that the Mt. Zion substation is unnecessary.

* * * * *

b. Pana-Mt. Zion

* * * * *

ii. Difficulty and Cost of Construction

Staff notes in this section of its brief that the Corzine/Assumption Group’s proposal for an alternate route along Highway 51 is intriguing but problematic because it is very close to several residences south of Assumption. *Id.* at 28. Staff concludes its discussion by noting that:

Given time available, exploration of modifications to the Corzine/Assumption Group proposal is not feasible. However, a good choice for this segment would be to further consider use of Highway 51 as a corridor for the transmission line from Assumption northward.

Staff also acknowledges that the Illinois Department of Transportation (“IDOT”) has authority to refuse access to its property for a transmission line, *id.* at 25, and IDOT’s willingness to grant ATXI a license to use its property is unknown. *Id.* at 31.

While these Intervenors agree that it would be preferable to have further time to study and develop alternates, that additional time is not authorized by the governing law. Staff’s suggestion that “a good choice for this segment would be to further consider use of Highway 51 as a corridor” is wishful thinking that should be disregarded. The law does not provide additional time for further consideration.

* * * * *

c. Mt. Zion-Kansas

In their Initial Brief, Tarble, CCL and Reed cited evidence establishing that the cost estimate for ATXI’s original Primary Route in this segment is more than any competing route and that the Primary Route estimate is actually understated by more than \$4.3 million; it has significant environmental and social consequences; and it would force the closure of the Reed’s restricted landing area runway. The only parties who initially supported use of the Primary Route in this segment were: (1) ATXI, which identified the Alternate Route as its Rebuttal Recommended Route in its rebuttal testimony, and later threw its support behind the ATXI-MCPO Stipulated Route in Stipulation No. 7, *see* ATXI Ex. 13.0 at 21:450, ATXI Ex. 13.4 and Stipulation No. 7; and (2) MCPO, which originally proposed to use part of the Primary Route for its Pana to Kansas Route, but now supports the ATXI-MCPO Stipulated Route. *See* Stipulation No. 7.

No party to this proceeding supports construction of this segment on the Primary Route (with the exception of a small segment adjacent to the Mt. Zion substation that is part of the ATXI-MCPO Stipulated Route). Either the ATXI-MCPO Stipulated Route or the original ATXI

Alternate Route are preferable. One of these two routes should be selected as the preferred route in the Final Order.

* * * * *

g. Kansas to Indiana State Line

In their Initial Brief, STPL, Tarble and JDL devoted sixteen pages to a factual analysis of the advantages of the Kansas to Indiana State Line Stipulated Route (ATXI's original Alternate Route) and the disadvantages of the Primary Route in the Kansas to Indiana state line segment of the proposed transmission line. RCECCC argued in its Initial Brief that: (1) the Commission should defer decision on the route for this segment, RCECCC Br. at 4-6; or (2) the Commission should approve either STPL Alternate Route 1, STPL Alternate Route 2, or the original ATXI Primary Route. *Id.* at 7-19. ATXI argued in its Initial Brief with respect to this segment that, among others, the Primary Route is valid for the reasons set forth in ATXI's April 26, 2013 brief in response to the ALJ's April 19, 2013 Order, and that the Commission need not address the issue. ATXI Br. at 82-83. The RCECCC and ATXI arguments are addressed in the following sections of this brief. As there is no provision in the mandatory outline for an argument to defer ruling on a particular segment, which is what RCECCC has done, it is addressed in this opening discussion.

RCECCC makes essentially four arguments to support its "deferred decision" suggestion. First, RCECCC argues that the "convoluted nature" of the ATXI route stipulation with STPL, Tarble, JDL and others (Stipulation No. 5) "allowed the members of RCECCC very limited time to formulate their arguments on the record about the undesirability of the Rebuttal Recommended Route, and the bona fides of the two alternate routes proposed by STPL." RCECCC Br. at 4-5. Second, RCECCC suggests that the stipulation between ATXI and STPL reflects a compromise on a route that neither believes is its "best effort." *Id.* at 5. Third,

RCECCC points to the testimony of Staff witness Greg Rockrohr, who testified he did not have time to review proposed routes from the ground, or evaluate all possible routes. *Id.* at 6. Finally, RCECCC suggests that the Commission “has to be concerned about the manner in which the Rebuttal Recommended Route came to the fore on this expedited schedule,” and therefore “common sense and the totality of the record indicates that it may be premature to issue a Certificate to ATXI for the Kansas to Indiana State Line portion of the project.” *Id.* Those arguments are devoid of merit or factual support in the record of this case.

The assertion that the ATXI Stipulation No. 5 deprived RCECCC of the opportunity for meaningful participation in this case is utter nonsense. The ATXI Alternate Route, which is now the Rebuttal Recommended Route, was detailed in ATXI’s Petition filed in November 7, 2012 as one of the two viable routes ATXI had selected for possible construction of its transmission line in this segment of the project. See ATXI Ex. 4.0 at 9:176 to 192; ATXI Ex. 4.2, Parts 87 to 92; and ATXI Ex. 4.3 (Part 8 of 8, Page 1 of 2). The STPL alternate routes were submitted with STPL’s motion for leave to file them *instanter* on January 17, 2013, and their filing was authorized in the ALJ’s January 25, 2013 Order. RCECCC had the same amount of time to explore the validity and benefits and detriments of those potential routes as every other party in this case. The fact that RCECCC made a calculated decision not to engage in meaningful participation in this proceeding until just before the evidentiary hearing most assuredly is not grounds for the Commission to decline to select a route in this segment.

With respect to RCECCC’s speculation about the “best efforts” of ATXI and STPL, that is: (1) irrelevant; and (2) not supported by the record. The Commission’s decision in this case will be based on the merits, not on some intervenor’s speculation about why other parties entered into a stipulation to support a particular route. Moreover, RCECCC’s argument ignores the

fundamental fact that the merits of this case firmly support selection of ATXI's Alternate Route over the Primary Route in the Kansas to Indiana state line segment. After ATXI filed its petition announcing its preference for the Primary Route, STPL, Tarble and JDL filed extensive testimony containing a substantial amount of evidence demonstrating that the Primary Route may not be viable, and has a number of disadvantages not considered in ATXI's initial analysis. *See e.g.*, STPL Ex. 1.0 through 5.0, JDL Ex. 1.0 and 2.0, and Tarble Ex. 1.0. The fact that ATXI re-evaluated its priorities is a tribute to its judgment, not an indictment of its character.

Proponents in ICC matters frequently re-evaluate or alter their positions based on evidence submitted during the course of the proceeding by Staff and Intervenors. That is not grounds for the Commission to refuse to decide issues.

As noted in the opening section of this reply brief, the fact that use of expedited procedures precludes every possible route from being evaluated, or every possible piece of evaluation completed, is not grounds for refusing to issue a final order deciding the issues based on the evidence presented. RCECCC's argument to that effect is wrong.

Finally, there is nothing suspicious about the parties' arm's length negotiated stipulation, nor do "common sense and the totality of the record" support refusing to issue a decision based on the evidence in the record.

* * * * *

2. Difficulty and Cost of Construction

In its initial brief, STPL, Tarble, and JDL reported that the estimated cost of the Stipulated Route (ATXI's Alternate Route) is \$63,919,000, the estimated cost for STPL Alternate 2 is \$62,348,000, and the adjusted estimated cost for the Primary Route is \$70,053,200 to \$70,317,736. Initial Br. at 17-18. Because ATXI's modified route utilizes a deadhead structure with roughly a ninety degree angle, the adjusted estimated cost of the Primary Route is

actually understated by as much as an additional \$107,250, which is the cost of the deadhead structure required for the modified route. *See* ICC Staff Ex. 1.0(R) Attachment H, Page 2 of 2 (cost of structure); ATXI Ex. 13.10 (reflecting severe angle of Modified Route).

In their Initial Brief, STPL, Tarble and JDL presented compelling evidence that the Primary Route is not viable because: (1) ATXI cannot cross the federal floodplain area that lies in the path of the Primary Route in Clark County; and (2) ATXI failed to give notice to all landowners affected by its late filed modified route. Initial Br. at 18-25. RCECCC ignores the evidence in the record, blithely stating that “even though it may be the most expensive option, ATXI’s Primary Route should still be considered a viable alternative for this segment of the project.” RCECCC Br. at 10. RCECCC’s bald assertion concerning viability of the Primary Route is contrary to the evidence in the record, and should be disregarded.

For its argument concerning viability of the Primary Route, ATXI adopts the arguments in its April 26, 2013 brief it filed on the issue in this proceeding for the proposition that the “floodplain easement is not an absolute bar to construction of the Primary Route.” ATXI Br. at 83. ATXI argues in the same vein that the “federal floodplain easement in Clark County simply reflects an [sic] matter of permitting or land rights of the type typically addressed after the Commission has approved a general route in a proceeding such as the one at bar.” ATXI Br. at 83 (citing D. Murphy’s Rebuttal Testimony at 65-66). The fundamental problem with ATXI’s analysis is that the uncontroverted evidence in the record is that the federal agency that owns the federal floodplain easement unequivocally on four different occasions told ATXI that ATXI may not use the federal floodplain property for the proposed ATXI transmission line. *See* STPL Cross Ex. 8, 9, and 18 and D. Hiatt 12/6/12 Public Comment on e-Docket. Further, use of the

federal floodplain easement property by ATXI would contravene the agency's Infrastructure Policy on Easements, specifically including floodplain easements. STPL Ex. 15.0.

ATXI also suggests that the Commission need not address the issue as it is not required to do so in order to rule in this case. This is not the U.S. Supreme Court where a party is asking the Court to address a constitutional issue that the Court need not address to decide the case. Here, the Commission will be required in rendering its decision to conduct a comparative analysis of the relative advantages and disadvantages of every viable proposed route in each of the segments. The Commission's analysis should only address the viable routes, and the evidence is abundantly clear that the Primary Route is not viable and deserves no further consideration.

4. Environmental Impacts

RCECCC cites potential damage to native hardwood forests on the Alternate Route and blithely asserts that there "is no evidence on this record that similar environmental impacts exist on the other possible routes through this area, even in regard to the floodplain issue on the Primary Route." RCECCC Br. at 11. This statement ignores the testimony of the STPL's Laura Te Grotenhuis concerning her tiled and terraced field, and the damage to her Conservation Practices 21 and 33 areas, *see* STPL Ex. 2.0 and 2:63 to 3:72; it ignores Perry Baird's testimony about Dahnke's Pine Patch, STPL Ex. 1.0 at 6:110 to 7:121; and it ignores Margaret Sue Amacher Snedeker's testimony about damages to her two Centennial Farms, the Renner Family Cemetery and her idyllic neighborhood. STPL 5.0 at 3:34 to 4:50.

5. Impacts on Historic Resources

RCECCC states that there "is scant evidence on this record which indicates that historical resources are going to be an issue to any of the relevant routes." RCECCC Br. at 12. To the contrary, STPL submits that the prospective damages that construction on the Primary Route would do to Ms. Snedeker's two Centennial Farms that have been in her family for 133 and 167

years, and to the Renner Family Cemetery on her property containing the remains of her great-great-grandparents, are most assuredly historic resource impacts that must be taken into account. STPL Ex. 5.0 at 3:34 to 4:50.

* * * * *

VII. OTHER

In Staff’s opening brief, in this section, Staff asserted that after the filing of testimony, “Staff learned that neither ATXI nor MISO considered extending 345 kV from the substation a substation [sic] at the Kincaid Generator Plant to Mt. Zion rather than extending 345 kV south to Pana, and then back north to Mt. Zion.” Staff Br. at 40 (citations omitted). Staff’s brief goes on to state that “Staff observes that an alternative that supplied a new Mt. Zion substation site from Kincaid rather than from Pana could eliminate the need for the Pawnee to Pana and the Pana to Mt. Zion 345 kV segments, and reduce the overall length of the new transmission line.” *Id.* at 40-41. On that basis, Staff also suggests that the commission defer ruling on the Pana to Pawnee segment as well. *Id.* at 41.

However, when the support materials that Staff cites are examined, the Kincaid facility is actually a Commonwealth Edison facility, and ATXI has technical concerns that the seven position ring-bus configuration of the ComEd Kincaid substation could negatively impact system reliability and result in maintenance related negative system reliability impacts. *See* ATXI Response to Data Request Eng. 6.01S dated 5/14/13 that is part of Staff-ATXI Joint Ex. No. 1. Further, it is clear from Staff Witness Greg Rockrohr’s testimony cited to support Staff’s position that the ComEd Kincaid Substation connection is just a concept that Staff has not studied:

There is – I discovered after – after the filing of testimony, I discovered that there was not a consideration of a Kincaid to Mt. Zion option that, I believe, needs to be explored as well.

5/13/13 Tr. at 296:15-18.

As previously discussed in this brief, Staff has suggested that no route be approved for the Pana to Mt. Zion to Kansas segments because Staff thinks it is possible that a better location might be identified with more time and study for location of the Mt. Zion substation. Then, in this section of the brief, Staff added the Pawnee to Pana segment to its recommended deferred decision category because Staff thinks it might be beneficial to study a connection to the ComEd Kincaid substation based on Staff data requests filed immediately prior to the hearing from which Staff concluded this issue had not been studied to Staff's satisfaction.

With all due respect to Staff, the possible ComEd Kincaid substation route is one that under the prior orders in this case, Staff had an obligation to identify and explore earlier in the case. A Final Order in this case should not be deferred because Staff thinks there is another issue that it would like to review after ATXI studies it further.

CONCLUSION

Based on the evidence in the record, and for the reasons set in the initial and reply briefs of STPL, JDL, Tarble, CCL and Reed, the Commission's Final Order should provide for issuance of a certificate of public convenience and necessity: (1) in the segment between Mt. Zion and Kansas, for either the ATXI-MCPO Stipulated Route or the ATXI Rebuttal Recommended Route; and (2) in the segment between Kansas and the Indiana state line, the Kansas to State Line Stipulated Route. Further, the Commission should issue a certificate of public convenience and necessity for the routes in the segments from Pawnee to Pana to Mt. Zion that the Commission finds best satisfy the statutory criteria in those segments. Under no circumstances should the Commission defer making a decision to approve a route in the Mt. Zion to Kansas to Indiana state line segments.

Respectfully submitted,

Dated: June 10, 2013

STOP THE POWER LINES COALITION,
TARBLE LIMESTONE ENTERPRISES,
JDL BROADCASTING, INC., COLES
COUNTY LANDOWNERS, REED
INTERESTS AND COLES AND
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