

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

REPLY 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

We are in the midst of an expedited review of a petition filed by ATXI under Section 406.1 of the PUA which fails to allow the Commission the flexibility to modify the schedule in order to protect the due process rights of landowners. Bigger and more complex transmission line projects take more time than the maximum 225 day time frame dictated by Section 406.1. Although the Commission is bound by the arbitrary deadline set forth under the expedited review provisions, this proceeding is also subject to procedural due process protections provided for under both the United States and Illinois Constitution.

“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972) Reviewing courts consider three factors when analyzing due process: (1) the magnitude of the private interest affected; (2) the degree of risk of an unjust deprivation of those rights through the procedures used; and the value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the burdens of conducting additional or alternative procedures. *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)

The magnitude of the private interests at issue are significant as property rights and income are at risk. ATXI goes to great lengths to downplay the impact of a transmission line on farming operations and makes much ado about the ability to reduce the impact of the line on farming by adjusting the placement of the poles where possible. However, as ATXI’s witness admitted during the evidentiary hearings, the line itself impacts farming operations and once the easements are procured ATXI has little flexibility in adjusting the location of the line. (Transcript of Proceedings, May 14, 2013, pp 351, 360) As numerous interveners have testified, the proposed line will cause soil compaction, impact drainage tiles, aerial application, irrigation, gps systems in farm equipment, and the hinder the ability to farm efficiently. In *Ness v. Illinois Commerce Commission*, the Illinois Supreme Court affirmed the reversal of the Commission’s grant of a CPCN due to the impact on farming operations, especially farm splitting, the number of farms impacted, and impact on farms with superior soil types. *Ness v. Illinois Commerce Commission*, 367 N.E.2d 672,674, 67 Ill.2d 250, 254 (1977). Factors such as these should be thoroughly explored during the routing process and developed during the evidentiary hearings.

In the event that segments of this project are not approved by the Commission, the Farm Bureau suggests that a public forum be held in any subsequent proceeding to ensure that potentially impacted landowners have the opportunity to address the Commission and provide ICC Staff with evidence which is probative of the “Community Acceptance” factor considered as part of the least-cost analysis.

There is a high degree of risk that, given the “cloudy” evidence in this record, interveners may be deprived of property rights if the Commission grants a CPCN for the entire route. *Lamm v. McRaith*, 2012 Il.App.(1st) 112123, 2012 WL 5193251 (Ill.App. 1 Dist.) The expedited review process must be tailored to provide a meaningful “opportunity to be heard in an orderly proceeding which is adapted to the nature and circumstances of the dispute.” *General Service Employees Union v. IELRB*, 285 Ill.App.3d at 515, 220 Ill.Dec.663, 673 N.E.2d 1084 (1st. Dist. 1996)

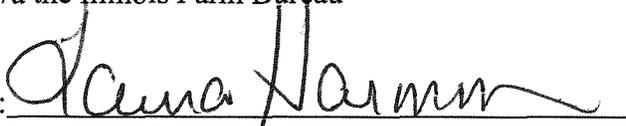
Although 406.1 allows a petitioner all the time it needs to plan and file a petition, Staff and Interveners are given 225 days to respond which is manifestly unfair. It should take 18 months to 2 years to try a petition for a 375- mile 345 kV transmission line plus related facilities -- not 225 days. As previously described in our Initial Brief, the traditional rounds of discovery did not occur in this proceeding due to the time constraints. The interveners and staff were not allowed to file rebuttal testimony to ATXI. Staff Engineer Greg Rockrohr testified that he didn’t have enough time to review the proposed routes from the ground, or fully consider the alternate routes proposed by interveners. The ALJs’ have authority to order further investigation by the staff into the issue of least-cost means under Section 200.500 of the Illinois Administrative Code, yet such authority is meaningless given the time constraints of Section 406.1 of the PUA. 83 Ill.Admin.Code §200.500(e)

“The principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision.” 83 Ill.AdminCode §200.25(e) The evidentiary record in this case is neither complete nor sufficient to serve as a basis for a legally sustainable decision. The ICC Staff recognizes this as well. Staff recommends that the Commission exclude the Pawnee-Pana and the Pana-Mt. Zion segments, and it’s unclear if and where the Mt. Zion substation should be located. ATXI’s exclusion of 138kV connections from this petition further complicates Staff’s ability to recommend an appropriate location for substations. (ICC Staff Exhibit 1.0R, pp 16-18, lines 347-380) (Transcript of May 13, 2013 Proceedings, pp 216-217)

With respect to the third factor reviewing courts consider in a due process analysis (burdens of conducting additional or alternative procedures), the Commission may deny certification of segments of the project and consider those in a subsequent petition. This is exactly what the ICC Staff recommends. (Initial Brief of the Staff of the Illinois Commerce Commission, pp. 40-41) Although the parties involved in this proceeding worked diligently to defend and propose alternate routes, respond to discovery, and attempted to resolve disputes regarding proposed routes, the expedited review process does not allow for the development of a complete and accurate record upon which this Commission can base a legally sustainable decision. This case clearly demonstrates the need for the legislature to amend Section 406.1 of the PUA. Although Section 406.1 applies to this proceeding, the procedural due process protections afforded to the landowner interveners and Illinois law warrant additional investigation of the least-cost routes suggested in this matter.

Respectfully submitted,

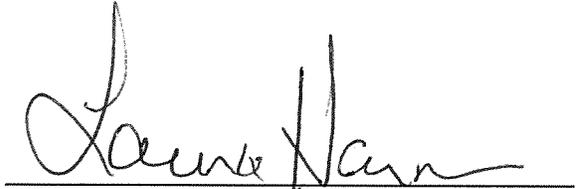
ILLINOIS AGRICULTURAL ASSOCIATION
d/b/a the Illinois Farm Bureau

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CERTIFICATE OF SERVICE

I, Laura A. Harmon, an attorney, certify that on June 10, 2013, I caused a copy of the foregoing Reply 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.



Laura A. Harmon