

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY
OF ILLINOIS

Petition for Certificate of Public Convenience and Necessity, pursuant to Section 8-406 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

CHANNON FAMILY TRUST REPLY

The Commission's proposed order in this case states that affected landowners are entitled to due process in this proceeding. See Proposed Order, page 7, where the Commission noted that ATXI failed to provide the Commission with names and addresses for a number of affected landowners: "[D]ue process required the Commission to extend the deadline to provide the newly notified landowners some semblance of an opportunity to respond." The ICC Staff, in its filing of January 11, 2013, noted that ATXI's proposal to continue with the existing timetable even though landowners had not yet been notified by mail, "denies due process to the 130 landowners who have not received notice" (p. 4).

Despite the Commission's position, ATXI and MCPO now assert that landowners such as the Channons have no right to due process, no right to mailed notice, and no right to any semblance of an opportunity to respond.

ATXI acknowledges that the Commission has the right to determine and require additional notice requirements in a case, beyond what the Act may require. This is expressly stated in Section 200.150(n) of the ICC Rules. Here, the Commission determined that written notice to each affected landowner was required, and imposed the requirement on both ATXI and MCPO to provide listings of the names and addresses of each affected landowner. No one disputes that the Channons did not receive the notice that the Commission determined was required in this case.

ATXI and MCPO cite Rule 200.150(h). However, this section expressly applies only to cases under Section 8-406 of the Act. This is a case under 8-406.1. But even if subsection (h) is applicable here, it provides that failure to notify an affected landowner does not invalidate an order which has been entered. Here, no order has yet been entered. All the Channons are asking is that the Commission treat them the same as other late-notified owners, and afford them the same opportunity to respond that other landowners have had.

The Channons are required to accept the record in order to intervene; the record here confirms that they were not given the notice the Commission required. In its filing of January 11, ICC Staff argued that the appropriate remedy for such failure to notify is that “the Commission enter an order dismissing solely the Pana-Mt. Zion segment,” and that ATXI be required to “re-file that portion in a separate proceeding” (p. 4, 5). That is the same remedy the Channons request.

ATXI suggests the equities do not favor the Channon family because ATXI held public meetings in Douglas County, published a notice in a local newspaper, and opened a website. Presumably, the Commission’s requirement of mail notification of landowners was a result of its recognition that general, indirect measures are inadequate. As noted in the petition, the Channon family resides in California. Even if they had attended any number of ATXI’s public meetings, they

would have learned that this proceeding did not involve Douglas County. If they had seen the notice in the local paper of this proceeding, they would have seen that it involved several counties, but did not involve Douglas County. If they had gone on the Illinois Rivers Project website (even to this day), they would have learned that this transmission line did not involve Douglas County.

MCPO laments that its failure to notify the Channons was “inadvertent and unintentional.” It claims the remedy the Channons request is “extreme.” It points out that it has “invested large amounts of time and money.” All this may be true, but it was MCPO that asserted its right to disrupt the lives and property of hundreds of Piatt and Douglas County residents with the filing of its alternate route, simply to get the route out of Moultrie County. For it to now argue on p. 2 that there was no legal obligation “upon MCPO to provide notice” suggests that MCPO wants to have the benefits, but doesn’t want to bear the burdens, of proposing an alternate route. As noted in Channon’s affidavit, MCPO furnished the list and had to know the list lacked an address for Channon Family Trust. Nevertheless, MCPO ran its route right through the Channon’s property.

On page 8 of its response, ATXI criticizes the Channon’s case cite (*People ex rel. Commerce Comm. v. Operator Communication*) as involving a utility’s due process rights, not a landowner’s. Yet both ATXI and MCPO rely on *Quantum Pipeline* to argue a landowner has no due process rights. They fail to mention that *Quantum Pipeline* also concerns the rights of a utility, not a landowner. The issue in *Quantum Pipeline* was whether a utility, once it has received a certificate, has a protectible property interest in the certificate such that the Commission cannot later revoke it. Nothing in the *Quantum Pipeline* court opinion has any application to this case. The 1917 railroad case ATXI cites as its other authority notes that the landowners were notified of the proceedings, but simply complained that they did not receive a certified copy of the order. This case is therefore not

on point, and pre-1935 cases are not binding in Illinois in any event (see *People v. Glisson*, 202 Ill.2d 499 (2002)).

Just because ATXI and MCPO argue the present case doesn't involve a "taking" of property, does not mean affected landowners have no due process or notice rights whatsoever in a certificate proceeding. Notice and the opportunity to be heard are fundamental elements of any judicial or administrative proceeding, no matter what the underlying issues are. See, for example, *Pettigrew v. Nat. Accounts System Inc.*, 67 Ill.App.2d 344 (2d Dist. 1966), which involved a civil suit over a noncompetition agreement. The court there stated that the "procedural aspects of due process and equal protection of the laws require that a person be given notice and an opportunity to be heard in an orderly proceeding adapted to the nature of the case." 67 Ill.App.2d at 350. When the procedure followed by a tribunal is so lacking in principles basic to our system of justice that it offends the system, "that procedure must be condemned as a denial of due process." *Id.* at 351. The court in *Pettigrew* found that the parties had been denied "the opportunity to prepare and present their case fairly and fully" and found that was "a denial of due process." *Id.* at 352. In reversing the trial court's judgment, the appellate court held: "The procedure observed by the court in the case at bar does not comport with the traditional ideas of fairness." *Id.* at 354.

The Commission has recognized in this proceeding that there is a fundamental right of the affected landowners to notice and an opportunity to be heard. The Channons have had neither. The proposed order will burden their family farm with a large transmission line that makes two 90-degree turns while passing through the middle of their property.

The Channon Family Trust respectfully requests the Commission grant its motion to intervene and strike the proceedings as to the Mt. Zion to Kansas segment, so that the Channon

Family Trust can be afforded the same fundamental opportunity to participate in these proceedings as other affected landowners.

Respectfully submitted,

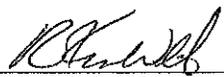
NANCY C. WIEST, JOHN L. CHANNON,
and BRYAN C. CHANNON, Co-Trustees of
the Channon Family Trust

By  _____
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CERTIFICATE OF SERVICE

The undersigned, an attorney licensed to practice in the State of Illinois, hereby certifies that a copy of the foregoing instrument was filed and electronically served upon the individuals identified in the Illinois Commerce Commission's official service list for Docket No. 12-0598 on the 19th day of July, 2013.

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