

Docket No: 12-0598
Bench Date: 10-02-13
Deadline: 10-08-13

MEMORANDUM

TO: The Commission

FROM: John D. Albers, Administrative Law Judge
J. Stephen Yoder, Administrative Law Judge

DATE: September 25, 2013

SUBJECT: 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.

RECOMMENDATION: Grant three of the applications for rehearing and deny three of the applications for rehearing.

On August 20, 2013, the Commission entered an Order granting Ameren Transmission Company of Illinois ("ATXI") authority under Section 8-406.1 of the Public Utilities Act ("Act") to construct, operate, and maintain a new 375-mile long 345-kilovolt electric transmission line running generally from the Mississippi River near Quincy, Illinois to the Indiana border, just south of Terre Haute, Indiana. The deadline for filing applications for rehearing was September 19, 2013. A total of seven applications for rehearing have been received and are as follows:

Application filing date	Party	Deadline for action on application
9-5-13	Andrew and Stacy Robinette	9-25-13
9-18-13	ATXI	10-08-13
9-18-13	Coalition of Property Owners and Interested Parties in Piatt, Douglas, and Moultrie Counties ("PDM Coalition) and Channon Family Trust	10-08-13
9-18-13	Morgan, Sangamon, and Scott Counties Land Preservation Group ("MSSCLPG")	10-08-13
9-19-13	Midcontinent Independent System Operator ("MISO")	10-09-13
9-19-13	Adams County Property Owners and Tenant Farmers ("ACPO")	10-09-13
9-19-13	Edgar County Citizens Are Entitled to Due Process ("Edgar DP")	10-09-13

The Commission considered the first of the applications for rehearing on September 18, 2013, when it granted the Robinette's application. Their application concerned a very small portion of the approved route southwest of Waverly in Morgan County, Illinois, along the segment between the Meredosia and Pawnee, Illinois substations. The deadline for Commission action on the Robinette's rehearing is February 15, 2014.

Of the remaining six applications for rehearing, the Commission should grant the applications of ATXI, MISO, and possibly PDM Coalition and Channon Family Trust. The Commission should deny the applications of ACPO, MSSCLPG, and Edgar DP. The reasons for the recommendation on each application are set forth below. For the sake of the clarity of the record, the Commission should separately address each application at the October 2, 2013 Bench Session.

1. ATXI Application for Rehearing

ATXI points out that the Commission's August 20, 2013 Order approves seven of the nine route segments and locations for three of the nine substations. ATXI seeks rehearing to provide additional evidence on the least cost routes between Pawnee and Pana and between Pana and Mt. Zion. ATXI adds that it will provide evidence on the least cost route between Mt. Zion and the border between Macon and Piatt Counties, where the approved route resumes. ATXI also requests rehearing for the purpose of better explaining the need for and location of new substations in Ipava, Pana, Mt. Zion, Kansas, Sidney, and Rising. ATXI offers a schedule for the rehearing phase of this proceeding.

On September 23, 2013, Macon County Property Owners ("Macon PO") and Leon Corzine each filed a response to ATXI's application for rehearing. They note that 83 Ill. Adm. Code 200.880 provides that an "application [for rehearing] shall state the reasons therefore and shall contain a brief statement of proposed additional evidence, if any, and an explanation why such evidence was not previously adduced." Macon PO and Mr. Corzine argue that ATXI's application for rehearing must be denied because it contains no explanation why the evidence it proposes to submit was not previously adduced, contrary to the requirement in the Section 200.880.

The Commission should grant ATXI's application for rehearing so that the "gap" in the approved route and questions regarding the substations can be resolved. In doing so, the Commission should also consider directing ATXI to explain whether a direct segment between Pawnee and Mt. Zion (via Kincaid) is appropriate and, in conjunction therewith, why necessary upgrades in the Pana area must be undertaken as part of the Illinois Rivers Project rather than separately by Ameren Illinois Company. Because Staff raised the Kincaid option, the Commission may also want to consider directing Staff to propose a route between Pawnee and Mt. Zion through Kincaid. With regard to the schedule proposed by ATXI, the Commission should refrain from approving a schedule without the input of all of the parties.

2. MISO Application for Rehearing

MISO's comments are consistent with ATXI's position. MISO generally discusses its concerns with the Commission's decision in the August 20, 2013 Order to defer approval of certain segments and substation proposals. MISO believes that rehearing is appropriate to gather additional evidence about the unapproved route segments and substations in order to construct an end-to-end transmission line across Illinois to meet both local and regional reliability needs.

The recommendation regarding MISO's application for rehearing is the same as that made for ATXI's application for rehearing.

3. ACPO Application for Rehearing

ACPO argues that ATXI failed to meet its burden regarding the entire project and requests that the Commission grant rehearing and deny the petition in its entirety. In support of this position, ACPO observes that the Commission expressed serious concerns about Staff and intervenors, as well as itself, having sufficient time to develop an adequate record upon which to draw sound conclusions. ACPO is particularly troubled by the approved route for the segment between the Quincy and Meredosia substations. ACPO challenges the notion that the approved route is less costly than ACPO's alternative route.

ACPO accurately relates the Commission's concerns about the time available and thoroughness of the record under Section 8-406.1 of Act. For better or worse, however, that is all the time provided by the General Assembly and the Commission can not refuse to carry out the law even if it may consider the time available for doing so insufficient. Moreover, the evidence ACPO cites in its application for rehearing is the same as that raised in its testimony and briefs. ACPO's arguments do not warrant rehearing and its application for rehearing should be denied.

4. MSSCLPG Application for Rehearing

MSSCLPG's request for rehearing pertains to the transmission line segment between the Meredosia and Pawnee substations. From the outset of this docket, MSSCLPG did not object to ATXI's primary route for this segment but did object to ATXI's alternate route. Later, another group of landowners, Morgan and Sangamon County Landowners and Tenant Farmers ("MSCLTF"), proposed an additional route for this segment of the line to which MSSCLPG did not object. About two months prior to the evidentiary hearing, MSCLTF withdrew its support for its own proposal and agreed with ATXI to support ATXI's alternate route. MSSCLPG states that the expedited schedule did not provide an opportunity for any other party to evaluate the merits of MSCLTF's proposal. The August 20, 2013 Order adopted ATXI's alternate route, in part due to MSCLTF's support for the alternate route. MSSCLPG urges the Commission to grant rehearing on the entire segment between the Meredosia and Pawnee substations

so that the merits of MSCLTF's proposal can be considered. Specifically, after ensuring proper notice to potentially affected landowners, MSSCLPG requests that the Commission conduct a more thorough analysis of the routes under the route selection criteria. In support of this request, MSSCLPG asserts that the MSCLTF route is shorter, less expensive, and does not adversely affect any intervenor. MSSCLPG also attaches two affidavits in which landowners claim they did not receive notice of the proceeding. MSSCLPG acknowledges that the Robinette's application for rehearing pertains to the same segment.

The ALJs do not believe that the arguments of MSSCLPG warrant granting rehearing for this segment of the project. MSSCLPG's failure to present evidence prior to the evidentiary hearing to support its recommended route does not appear sufficient reason to reopen this segment of the Illinois Rivers Project. While MSSCLPG also repeatedly mentions the expedited schedule provided under Section 8-406.1, the schedule was in effect for all parties, and does not in itself justify granting rehearing for this segment of the line. With regard to the affidavits supporting MSSCLPG's application for rehearing, the ALJs note that the landowners providing one of the two affidavits, Melba and Winston Lacey, appear on the service list for a November 21, 2012 notice informing landowners of this docket and their opportunity to participate.

5. PDM Coalition and Channon Family Trust Application for Rehearing

PDM Coalition and Channon Family Trust seek rehearing on the route selected for the transmission line between the yet to be determined Mt. Zion substation and Kansas substation. They argue that rehearing is necessary (1) to afford Piatt and Douglas County landowners minimum due process, (2) to find the least cost route only after the Mt. Zion substation is located, and (3) to properly weigh the evidence, which they believe substantially favors ATXI's route over that of the Moultrie County Property Owners ("Moultrie PO"). The joint applicants argue that some landowners along the Moultrie PO route never received the notice that they were statutorily entitled to. Moreover, they continue, Piatt and Douglas County landowners never had any reason to believe that their counties would be impacted by the proposed transmission line. Joint applicants state further that the fact that a location for the Mt. Zion substation has not yet been determined makes it impossible to know which route is least costly.

The argument that the least cost route can not be definitively known until the Mt. Zion substation location is determined may possibly warrant granting the PDM Coalition and Channon Family Trust application for rehearing. The final location of the substation could conceivably affect the least cost analysis. If the Commission is not inclined to agree, the remaining arguments in the application for rehearing do not warrant granting the requested relief. As noted in the August 20, 2013 Order, ATXI conducted six public meetings in Douglas and Piatt Counties (Order at 99), which should have put residents in those counties on notice of the transmission line project. The route selection criteria also favor the approved route overall.

6. Edgar DP Application for Rehearing

The most recent group of landowners to intervene filed the last application for rehearing. Edgar DP petitioned to intervene on September 18, 2013 and filed on September 19, 2013 a pleading entitled "Due Process Motion to Strike Proceedings as to the Edgar County Segment and Application for Rehearing." Edgar DP consists of 21 Edgar County landowners who state that they are directly affected by the August 20, 2013 Order. Attached to the September 19, 2013 filing is an affidavit from one member, Christopher Patrick, asserting that he never received notice of this proceeding. For this reason, Edgar DP insists that those portions of this proceeding relating to Edgar County should be stricken and rehearing should be granted so that all affected landowners can be given the same opportunity to propose alternate routes and participate in this docket.

Whether each of the 21 property owners making up Edgar DP own land directly over which the transmission line will run is not clear from the two Edgar DP filings. Generally, those owning land adjacent to or near a proposed transmission line route would not normally receive notice of such a docket from the Commission. In the instant proceeding, however, several of the Edgar DP members, including Mr. Patrick, appear on the service list for a January 31, 2013 notice informing landowners of this docket and their opportunity to participate. For some unknown reason, these landowners chose not to participate. While they are free to intervene now, they must accept the record as it exists at the time of their intervention (which they acknowledge in paragraph 4 of their September 18, 2013 petition to intervene and paragraph 5 of their September 19, 2013 filing). At this time, the transmission line route segment from the Kansas substation to the Indiana state line through Edgar County is resolved and in light of the reasons given, Edgar DP can not reasonably expect the Commission to vacate that part of this proceeding affecting Edgar County and grant rehearing. Accordingly, the Commission should deny Edgar DP's September 19, 2013 filing.

If the Commission grants any of the pending applications for rehearing, the deadline for an order on rehearing will be March 1, 2014. Depending on the scope of rehearing granted at the October 2, 2013 Bench Session, the previously granted application for rehearing of the Robinettes may be brought before the Commission as a "first order on rehearing," rather than try to compress the entire rehearing phase of this proceeding into a timeline meeting the deadline for the Robinettes' rehearing. Whether such a process would be necessary will not be known until all applications for rehearing are acted upon.

JDA/JSY