

**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,	)	Docket No. 12-0598
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.	)	

**LOCKHART LIVING TRUST, CHERYL GIVEN AND RHONDA BROCKETT  
APPLICATION FOR REHEARING OF SECOND ORDER ON REHEARING**

**INTRODUCTION**

Pursuant to Section 10-113 of the Public Utilities Act (the “Act”) 220 ILCS 10-113, and Section 200.880 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”), the Lockhart Living Trust Dated August 26, 1996, Cheryl Given and Rhonda Brockett (hereinafter, “Lockhart”, “Given” and “Brockett”) submit their Application for Rehearing (“Application”) of the order issued in the above captioned docket entered on February 20, 2014 and served on parties on February 21, 2014. (“the Order”). This Application for Rehearing raises issues relating to the Commission’s decision approving Ameren Transmission Company of Illinois (hereinafter “ATXI”) on ATXI’s Alternate Route 2 of the Pawnee-Pana Segment of the Illinois Rivers Project described in Section VIII of the Second Order on Rehearing in this docket dated February 20, 2014. Further, this Application for Rehearing concerns the adequacy of notice given to property owners who are severely and negatively affected by ATXI Alternate Route 2, and more specifically to Lockhart, Given and Brockett.

Because Lockhart, Given and Brockett were not given proper or adequate notice of this proceeding, they were precluded from taking any role or introducing any evidence in the portion of this proceeding addressing the routes proposed by ATXI for the Pawnee-Pana Segment of the Illinois Rivers Project, including the Alternate Route 2 that was approved by the Commission in the Second Order on Rehearing. Indeed, now that they were notified of the Second Order on Rehearing they immediately engaged counsel to represent their interests, prepared a Petition to Intervene, Affidavits detailing lack of notice and the severe negative impact of the ATXI Alternate Route 2 on their Property, and this Petition for Rehearing.

**I. The Commission Should Grant Rehearing on the Pawnee-Pana Segment of the Illinois Rivers Project.**

**A. Although Required by the Case Management Plan, There was a Total Lack of Notice to Affected Property Owners Impacted by ATXI's Alternate Route 2 In the Pawnee-Pana Section.**

The Initial order entered in this docket did not address Pawnee-Pana Section. (See Second Order on Rehearing, pp. 5, 6). While ATXI offered 3 proposals, a Primary Route, and Alternate Route and an Alternate Route 2 for the Pawnee-Pana Section with significantly different impacts to property owners, the focus of earlier proceedings was whether the Illinois Rivers Project should include the Pawnee-Pana segment at all. Instead, the Commission examined whether the Project should be routed through Kincaid. The Second Order on Rehearing was a total surprise to Lockhart, Given and Brockett. Discussing the first set of hearings in this proceeding, the Order indicates that “After notifying approximately 8,436 landowners, the Commission received petitions to intervene from roughly 80 organizations, businesses, individual landowners, and groups of landowners.” Order, p. 1.

That only the owners of *one* parcel appeared in the rehearing concerning the Pawnee-Pana should cause the ICC to question whether adequate notice was given to the property owners

that would be affected by Alternate Route 2. Indeed, no prior notice was given to the Lockart Family Trust or Cheryl Given or Rhonda Brockett or any owner of their Property of *any* of the routes. As indicated in the attached affidavits, of Rhoda Gresham Brockett, Cheryl Gresham Given and Robert Bruce Lockhart, none of the affected Property owners were notified at any point in this proceeding by ATXI or the Commission of *any* of the proposed routes or any modification of any route.

Moreover, because none of the public notices required by Section 8-406.1(a)(3) of the Public Utilities Act (220 ILCS 5/8-406.1(a)(3)) provided notice of the Reynolds/Ramey modification to Alternate Route 2, such personal notice was necessary and was never made. Had Lockhart, Given or Brockett received notice of the proposed modification, they would have been alerted to these proceedings and would have intervened and presented evidence on the severe adverse impact Alternate Route 2 would have on their property. Significantly, the Order notes that there is no evidence in the record that notice of that modification had been served on affected parties. (Order, pp. 36 and 42)

In fact, it was not until March 8, 2014 when Given received a certified mail letter from ATXI telling her that ATXI Alternate Route 2 had been approved as modified that any of the Petitioning property owners knew that their property was being considered as a route for the proposed transmission line.

The failure to notify the owners of the Lockhart/Given/Brockett Property is confirmed by ATXI Amended Ex. C to the Petition, which is a list of land owners notified by the company about this proceeding. None of the owners of the Lockhart/Given/Brockett Property are listed in that exhibit, including Albert E. Gresham, who deeded his portion of the property to Ms. Given

and Brockett during the pendency of this proceeding (See Given and Brockett Affidavits, ¶ 5 for a description of that transaction, Given Aff. Ex. 2 and Brockett Aff. Ex 2.)

The Commission Staff has argued that personal notice is crucial in order to ensure that the Commission is provided with evidence that will allow it to approve the route for a proposed transmission line in a Section 8.406.1 proceeding such as this one. Two months after it initiated this proceeding, ATXI filed a motion to amend the landowner list in Ameren Ex. C that had been attached to its Petition. The ATXI's Motion asserted that the original omission of those landowners was not important because landowners received notice through publication of public hearings required by Section 8-406.1(a)(3) prior to filing its Petition. Further, it argued that although Commission Rule 200.150(h), requires the company to provide the Commission with a list of affected landowners that would be used to provide individual notice, "it shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application." 83 Ill. Adm. Code §200.150(h). The Staff responded that Rule 200.150 only applies to requests for a Certificate of Public Convenience and Necessity under Section 8-406. The Staff concluded:

It simply does not follow that a party petitioning under the expedited circumstances of Section 8-406.1 would be granted leave to fail to give notice to affected landowners upon bringing its petition. Accordingly, Section 200.150(h) does not apply in the instant matter.

*Staff's Response to Ameren's Motion for Leave to File Amended Landowner List and For Order Directing the Clerk to Issue Notice to Certain Affected Landowners, p. 3.*

The Staff saw the failure to notify affected landowners at the beginning of the case as a fatal flaw. It therefore recommended that the Company withdraw its petition for the segment of the transmission line where those landowners were located and if it

refused to do so, that the Commission dismiss that portion of the case without prejudice so the Company could file it again with proper notice to landowners. *Id.* p. 4-5.

While the Administrative Law Judge did not take the step advocated by the Staff, he did find that accurately identifying all affected landowners as a necessary element of ATXI's application. He therefore entered an order determining that Ameren's petition would not be deemed to be complete until the date it filed the amended landowner list. Thus, the timetable for Commission action did not begin until all landowners had been notified. *ALJ Notice*, January 16, 2013. On January 24, 2013, the Commission affirmed that ruling, extending the timelines in this proceeding and denying Ameren's Petition for Interlocutory Review.

The importance of notice to affected landowners is also an underlying factor in the Case Management Plan under which this proceeding operated. That plan required parties proposing alternative routes to the ATXI proposed routes to notify affected landowners.

Only those Intervenors who have not previously identified an alternative route may do so on February 13, 2013. Those identifying an alternative route must provide names and addresses of affected landowners if such landowners are not already affected by either ATXI's primary or alternative route or another Intervenor's alternative route. The names and addresses must be the same as those obtained from the records of the tax collector of the county in which the land is located. The fact that a recommended route is along an existing electric transmission or distribution line does not eliminate the need to provide the names and addresses of landowners along that route. Any list of landowners should be provided to the Chief Clerk in Microsoft Word format. The list should be in a single column, with the mailing address of each landowner appearing below the landowner's name.

...

If Staff or an Intervenor proposes an alternative route and later decides to abandon that proposed alternative route, it is free to rescind its recommendation.

But upon doing so, it may not propose another new alternative route affecting previously unidentified landowners.

*Revisions to December 14, 2012 Case Management Plan. ALJ Notice dated Jan. 25, 2013., p. 2*

As shown in the attached affidavits and confirmed by Ex. C Amended to ATXI's Petition, the owners of the Lockhart/Given/Brockett Property never received notice of any of its proposed routes. Nor were they notified by Staff or Intervenors that their property would be affected by proposed alternatives to Ameren's proposals. Very simply, ATXI violated the Case Management Plan when it failed to provide notice of its proposed routes to the Lockhart/Given/Brockett Property owners. The best way to address this complete lack of notice is to grant rehearing and allow the owners of the Lockhart/Given/Brockett Property to present the evidence outlined in the attached Affidavits of Mr. Lockhart, Ms. Givens and Ms. Brockett.

**B. If Permitted to Introduce Evidence, Lockhart, Given and Brockett would Show the Severe Negative Impact that the ATXI Alternate Route 2 Would Have on Their Property.**

The lack of notice of the proposed routes, particularly notice of ATXI Alternate Route 2 that passes through the Lockhart/Given/Brockett Property, precluded the Petitioners from presenting testimony showing the significant burden that line would place on their property. Paragraphs 31 through 49 of the Affidavit of Robert Bruce Lockhart demonstrate the significant adverse impact that the ATXI Alternate Route 2 will have on the Lockhart, Given and Brockett Property. Given and Brockett in their affidavits join in these objections and concerns. (Given Aff, ¶14, Brockett Aff. ¶13.)

First, the more than 100 acre farm and an adjacent parcel have been subject to the following easements:

- a. Railroad Easement;
- b. Town Road Easement;
- c. Easement for the Widening of State Route 29;
- d. Easement for Existing 137 kV High-Voltage Transmission Lines;
- e. Easement for gas pipeline; and
- f. Easement Amendment for Conversion of Railroad to Town Walking/Biking Trail.

As stated by Mr. Lockhart: "The Lockhart/Given/Brockett Property owners have more than done their part for Illinois and should not be additionally burdened by yet another easement which will cause severe and disproportionate damage to their Property." Lockhart Affidavit, ¶ 49.

Second, construction of the proposed transmission line would obstruct the only access the family has for family operations on the farm due to its already limited access. It should be noted that this limited access will also impact the cost of construction of the line and its continued operation and maintenance. (Lockhart Aff. ¶43).

Third, the need to clear crops to provide access to the transmission tower bases will result in the Lockett/Given/ Brockett Property losing farmable land. (Lockhart Aff. ¶44). Additionally, the transmission towers and lines will cause interference with the GPS systems used in all modern farming equipment for tasks such as planting, seeding and harvesting. (Lockhart Aff. ¶44).

Fourth, construction and maintenance of the transmission towers and lines will most likely damage the fragile, 100 year old drainage clay-tile system on the Lockhart/Given/Brockett Property that is critical to continued farming operations. (Lockhart Aff. ¶45). Alternatively, the cost to ATXI of taking measures to protect that drainage tile will add to the construction cost and continued operations and maintenance cost of the transmission line.

Fifth, placement of the ATXI EHV transmission lines on the Lockhart/Given/Brockett Property would negatively impact future development of the property that the family has been investigating, including a 5 megawatt solar PV development, housing development or livestock operations. (Lockhart Aff. ¶¶46-47).

Sixth, the historic farmhouse on the adjacent property that was part of the original family farm would unlikely be able to undergo its planned restoration into a bed and breakfast if the transmission towers and lines are built on the property. (Lockhart Aff. ¶49).

**C. The ATXI Alternate Route 2 Is Not Supported By Substantial Evidence.**

The Public Utilities Act states that a Commission order is reversible if:

...

The findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission for and against such rule, regulation, order or decision

...

220 ILCS 5/10-201 (e)(5)

"Substantial evidence' has been defined as evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Central Illinois Public Service Co.*, 268 Ill. App. 3d 471, 479 (1994); *Ameren Illinois Co. v. Illinois Commerce Commission*, 967 N.E.2d 298, 319 (4<sup>th</sup> Dist 2013).

If the Commission considers the adverse impacts on the Lockhart/Given/Brockett Property discussed above, however, it must find that the portion of the ATXI Alternate Route 2 that passes over the Lockhart/Given/Brockett Property causes far more problems than it solves.

The Commission listed 12 criteria for choosing a transmission line route:

1. Length of the line
2. Difficulty and cost of construction
3. Difficulty and cost of operation and maintenance
4. Environmental impacts
5. Impacts on historical resources
6. Social and land use impacts
7. Number of affected landowners and other stakeholders
8. Proximity to homes and other structures
9. Proximity to existing and planned development
10. Community acceptance
11. Visual impact
12. Presence of existing corridors

Order, p. 6.

The adverse impacts on Lockhart/Given/Brockett Property demonstrated in the Affidavit of Mr. Lockhart, Ms. Given and Ms. Brockett are relevant to virtually all of these criteria. Most significantly:

- The limited access and need to protect the fragile 100 year old drain tile system will add to the difficulty and cost of construction as well as operation and maintenance;
- Construction and operation and maintenance of the transmission towers and line will impact the single, limited access to the farm needed for its operations;

- Construction and operation and maintenance of the transmission towers and line will most likely damage the fragile 100 year old drain tile system, creating an irreparable damage to farming operations;
- The transmission line would impact an historic resource;
- The transmission line would be proximate to planned development;
- The transmission line would have an adverse visual impact, and;
- The transmission line would add to already significant existing easement corridors already burdening the property.

Given these facts, the Commission's order approving the Alternate Route 2 is not supported by substantial evidence.

## II. CONCLUSION

For the reasons provided above, the Commission should grant this Application for Rehearing.

Dated: March 24, 2014

Respectfully submitted,

Lockhart Living Trust dated August 26, 1996,  
Cheryl Given and Rhonda Brockett

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of Lockhart Living Trust dated August 26, 1996, Cheryl Given and Rhonda Brockett's Petition for Rehearing has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 24th day of March 2014 by electronic mail or U.S. Mail, postage prepaid from Chicago, Illinois for parties without an electronic mail address.

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