

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

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’  
RESPONSE IN OPPOSITION TO MOTIONS FOR STAY**

**I. INTRODUCTION**

On March 19, 2014, the Morgan, Sangamon, and Scott Counties Land Preservation Group (MSSCLPG) filed a motion for stay with the Commission. The next day, the Edgar County Citizens Are Entitled to Due Process (ECC) filed a second motion for stay that appears to mimic the first. Movants ask the Commission to stay the August 20, 2013 Order (Order) and the February 20, 2014 Second Order on Rehearing (Second Rehearing Order) (collectively, the Orders).

The motions must be rejected. The Commission lacks jurisdiction to rule on them because Movants already have filed petitions for appellate court review.<sup>1</sup> The Commission should issue a notice and ruling making this explicit—that the motions will not be ruled upon because the appellate court now has jurisdiction. Such notice and ruling not only would inform Movants to not expect a ruling while their appeals are pending, but also would preclude more misplaced motions for stay. Recently, the Administrative Law Judges (ALJs) granted certain

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<sup>1</sup> Although the Commission lacks jurisdiction to hear the motions, ATXI submits the instant Response to ensure a complete record.

parties intervention but made clear that this was only for the purpose of appellate court review. The ALJs similarly should issue a notice and ruling that the MSSCLPG and ECC motions for stay are stricken as the matter is now under appellate court review.

Even if the Commission had jurisdiction, the motions fail even to allege—much less show—that stays are justified. Beyond these legal defects, the public interest demands denial of the requested stays. The Commission has examined the issues in this proceeding at length and in depth, under adversarial scrutiny, and it has determined that the Illinois Rivers Project is needed to address regional transmission and reliability demands. (Order 14.) Some segments of the Project must be in service by 2016. If the Project is delayed, Illinois families and businesses that depend on reliable energy will suffer irreparable harm, and the Project benefits the Commission found would be realized will be delayed. Neither Movant disputes this. Their sole basis for bringing the Project to an indefinite halt is their displeasure with the location of the Project. While they may be entitled to their opinions, they are not entitled to stays.

For these reasons, as explained more fully below, their motions must be denied.

## **II. ARGUMENT**

### **A. The Commission lacks jurisdiction to entertain the motions for stay.**

The most fundamental problem with the motions is that the Commission lacks jurisdiction to grant them.

To perfect an appeal, Illinois Supreme Court Rule 335 and Section 10-201 of the Public Utilities Act require an appellant to file a petition for review with the appellate court. Ill. Sup. Ct., R. 335(a), (i)(1) (incorporating Ill. Sup. Ct., R. 303(a)); 220 ILCS 5/10-201(a). The filing of a petition for review vests the Appellate Court with jurisdiction over the appeal—and more importantly for present purposes, it *divests* the Commission of jurisdiction. 220 ILCS 5/10-

201(b); *Harrisburg-Raleigh Airport Auth. v. Dept. of Revenue*, 126 Ill. 2d 326, 341 (1989); (“A notice of appeal [petition for review], unlike many other papers filed in the circuit court, is closely related to the appellate process; when timely filed it divests a trial court of jurisdiction and confers jurisdiction upon an appellate court.”); *People ex rel. Madigan v. Ill. Comm. Comm’n*, 231 Ill. 2d 370, 388-89 (2008) (“It is the notice of appeal which, when timely filed with a trial court, vests jurisdiction with an appellate court. In the context of administrative review, the petition for review submitted to the appellate court serves the function of the notice of appeal.”) (internal citation omitted). *See also GMC v. Pappas*, 242 Ill. 2d 163, 173 (2011) (“Once the notice of appeal is filed, the appellate court’s jurisdiction attaches instantaneously, and the cause of action is beyond the jurisdiction of the circuit court.”).

Both motions for stay were filed after Movants petitioned the appellate court for review of the Orders. ECC submitted a petition for review of the Order on or about October 17, 2013, and it filed its motion for stay over five months later. (*See* ECC Notice of Appeal (filed Oct. 22, 2013); ECC Mtn. for Stay ¶ 1 (filed Mar. 20, 2014).)<sup>2</sup> Likewise, MSSCLPG submitted a petition for review of the Second Rehearing Order at the same time it filed its motion for stay (and thus before the motion could be ruled on). (*See* MSSCLPG Notice of Appeal (filed Mar. 19, 2014); MSSCLPG Mtn. for Stay ¶ 1 (filed Mar. 19, 2014).)

This means that the Commission lacks authority to grant the motions. *See Ill. Consol. Tel. Co. v. Aircall Commc’ns, Inc.*, 101 Ill. App. 3d 767, 770 (4th Dist. 1981) (holding from the time of the Commission’s order through the rehearing process in the Commission, any stay must be sought from the Commission). If Movants wanted the Commission to stay its Orders, they should have filed their motions before they petitioned for direct appellate court review of

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<sup>2</sup> ECC’s motion also asks the Commission to stay the Second Rehearing Order. (ECC Mtn. for Stay 1.) ECC, however, did not participate in the rehearing and the segment of the Project that concerns ECC, the Kansas to Stateline segment, is not considered in the Second Rehearing Order.

the Orders. *See* Ill. Sup. Ct., R. 335(g) (“Application for a stay of a decision or order of an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency.”); *see also, e.g., Southwest Cent. Emerg. Tele. Sys. Bd. v. DuPage Cty. Emerg. Tele. Sys. Bd.*, Notice of Comm’n Action, Docket 05-0055 (Jan. 26, 2007) (denying motion for stay filed with the Commission after movant filed a petition for review with the appellate court). Having filed appeals, however, they have divested the Commission of jurisdiction, and their requests for stays cannot be granted.

In fact, multiple appeals of the Orders have been filed. Given this, to preclude any more misplaced motions for stay in this proceeding and to preserve the resources of the Commission and the parties, the Commission should issue a notice and ruling that it does not have jurisdiction over the Orders, and it should strike the pending motions from the record.

**B. Even if the Commission reached the merits, MSSCLPG and ECC are not entitled to stays of the Orders.**

The motions’ flaws are not merely jurisdictional, however. Both also fail *even to address*—much less satisfy—the standards required by law.

A party requesting a stay is not entitled to one as a matter of course, 220 ILCS 5/10-113(a), 220 ILCS 5/10-204(a), but must allege facts sufficient to support the stay it requests, *Douglas Transit, Inc. v. Ill. Comm. Comm’n*, 145 Ill. App. 3d 115, 121 (4th Dist. 1986) (“The reason for this requirement is that the party seeking a stay has the burden of proving adequate justification therefor.”). The movant must show that: they are likely to prevail on the merits of their opposition to the order; they will suffer great and irreparable harm if the stay is not granted; and no harm to other parties will result from issuance of the stay. *City of Chicago v. Ill. Comm. Comm’n*, 133 Ill. App. 3d 435, 449-50 (1st Dist. 1985); *Commonwealth Edison Co.: Proposed general increase in electric rates, etc.*, Order Denying Emergency Motion for Stay,

Dockets 87-0427, et al., 1993 Ill. PUC LEXIS 21, \*2 (Jan. 8, 1993) (denying motion for stay based on movant's failure to allege all three *City of Chicago* factors).

Movants have not alleged *any* facts in support of their motions to stay, let alone facts that would justify staying the Orders. Thus, even if the Commission had jurisdiction to consider the motions, it still must deny them. *Id.* \*2-4.

And Movants cannot allege facts in support of their motions, in any event. Movants cannot show that they are likely to succeed on the merits of their positions. The Commission has already extensively considered, under adversarial scrutiny, the issues in this case (in some instances, more than once). Movants cannot present new or additional evidence on appeal, 220 ILCS 5/10-201(d), and they will bear the burden of proving error on appeal, 220 ILCS 5/10-201(d). And they have given no reason to believe that they will overcome the presumption of reasonableness granted to the Orders on appeal. *Id.*; *Metro Util. Co. v. Ill. Comm. Comm'n*, 262 Ill. App. 3d 266, 269 (2d Dist. 1994) (“The Commission’s findings of fact are prima facie correct . . .”).

Nor can Movants show irreparable harm. The Certificates granted in the Orders do not confer any real property rights on ATXI, and as the Commission already found, if any harm results to Movants, it will be compensable (*see* Order 99)—and hence *not* irreparable.

Finally, Movants cannot overcome the impact that stays of the Orders—and thus the Project—will have on Illinois families and businesses that depend on reliable energy. Movants offer the conclusory statement that “[n]o party will suffer prejudice by the grant of an order staying the effectiveness of the Order.” (MSSCLPG Mtn. for Stay ¶ 5; ECC Mtn. for Stay ¶ 6.) This is patently false. Delaying construction of this Project will have numerous deleterious effects: it will increase the cost of construction, hinder contractual obligations to contractors

and equipment suppliers, and financially harm ATXI by delaying the returns that it is entitled to earn on its investment as a result of delayed in-service dates.

Even more consequentially, delaying the Project will inflict significant harm on the regional energy consumers who stand to benefit from the Project. As the Commission found, “a 345 kV transmission line is necessary to address transmission and reliability needs in an efficient and equitable manner and will benefit the development of a competitive electricity market.” (Order 14.) “[D]eferring action in this case will only increase the likelihood that [regional] reliability concerns will not be resolved until well after 2016.” (Second Rehearing Order 16 (referring to Pawnee to Mt. Zion portion of the Project).)

Neither Movant contests whether the Project is needed. Yet they pay no heed to the massive economic and operational impacts if the transmission line is not put into service. Movants are dissatisfied that some of the routes for the Project are near their real estate—and that is as far as their concern goes. But “the Commission cannot be so one-sided.” *Commonwealth Edison Co.*, 1993 Ill. PUC LEXIS 21, \*4 (denying emergency motion for stay and finding that “delay works hardship”). The Commission cannot disregard the hardship to Illinois energy consumers that will result if the Project is not timely constructed.

### **III. CONCLUSION**

The motions for stay must be denied. The Commission lacks jurisdiction over the motions and the motions fail to address the required factors for stay. The Commission should issue a notice and ruling making explicit that it now lacks jurisdiction over the Orders.

The Illinois Rivers Project needs to begin, and it needs to begin now. The Commission should not halt the Project (and the benefits it will bring to the entire region) based on the mere

wish of two parties who have had ample opportunity to litigate their positions and have nothing to show but dissatisfaction with the result.

Dated: March 31, 2014

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Anne M. Zehr

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**CERTIFICATE OF SERVICE**

I, Anne M. Zehr, an attorney, certify that on March 31, 2014, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Response in Opposition to Motions for Stay* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 12-0598.

/s/ Anne M. Zehr

Attorney for Ameren Transmission  
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