

**Docket No:** 12-0598  
**Bench Date:** 04-02-14  
**Deadlines:** 04-10-14 & 04-13-14

**MEMORANDUM**

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**TO:** The Commission

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

**DATE:** March 25, 2014

**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:** Deny the Applications for Rehearing concerning the Second Order on Rehearing.

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**I. INTRODUCTION**

On August 20, 2013, the Commission entered an Order approving portions of Ameren Transmission Company of Illinois' ("ATXI") proposed Illinois Rivers Project. On February 5, 2014 and on February 20, 2014, the Commission entered a First Order on Rehearing and a Second Order on Rehearing, respectively, considering revisions to previously approved portions of the Illinois Rivers Project and approving the remaining portions of the Illinois Rivers Project. Several parties aggrieved by the outcome of this matter have appealed the outcome, or have indicated that they plan to do so.

On March 21, 2014, the Macon County Property Owners ("Macon PO") filed an application for rehearing concerning the Second Order on Rehearing. Specifically, Macon PO seeks rehearing on two issues. First, Macon PO requests rehearing on the location of the substation to be built near Mt. Zion, Illinois. Second, Macon PO seeks rehearing on the Administrative Law Judges' ("ALJs") decision not to admit into evidence certain photographs offered by intervenor Paula Cooley. Macon PO filed an amended application for rehearing on March 24, 2014 reflecting non-substantive revisions to its original application for rehearing.

On March 24, 2014, the Commission received four additional applications for rehearing concerning the Second Order on Rehearing. The first of them is from William Garrett, Patricia Garrett, Jamie Garrett, Donald McWard, and Shirley McWard. The Garretts and McWards are concerned about the impact of the transmission line on their respective property along the Pawnee-Pana segment of the line. Edward Corley and the Edward Corley Trust (collectively "Corley") filed an application for rehearing as well. Corley favors the route proposed by the Moultrie County Property Owners ("MCPO") for the Mt. Zion-Kansas segment and believes that the Commission should too. MCPO filed its own application for rehearing as well and argues that the Commission erred in rejecting the route proposed by MCPO. The last application for rehearing came from the Lockhart Living Trust Dated August 26, 1996, Cheryl Given, and Rhonda Brockett (collectively "Trust Group"). They own property along the Pawnee-Pana segment and contend that they did not receive notice of this proceeding until after entry of the Second Order on Rehearing.

Also worth noting is that the Public Utilities Act and Rules of Practice do not address the filing of applications for rehearing following the entry of an order on rehearing. Although not common, from time to time parties have requested rehearing on orders on rehearing, but this is often viewed as a measure taken by a party wanting to protect its right to appeal. The ALJs are not aware of any court ruling addressing the necessity of seeking rehearing on an order on rehearing prior to filing an appeal. If the Commission wishes to treat the five filings as any other applications for rehearing, the deadline for Commission action on Macon PO's filing is April 10, 2014 and the deadline for the remaining filings is April 13, 2014.

## **II. MACON PO**

With regard to its first concern, Macon PO objects to the adoption of Staff's proposed Option #2 for the Mt. Zion substation over Staff's proposed Option #1. Using the 12 criteria found in the Second Order on Rehearing, Macon PO argues that Option #1 is preferable to Option #2. Macon PO desires rehearing to make this argument on the record. This matter has been previously considered by the Commission and Macon PO raises insufficient reason to revisit it. Accordingly, the Commission should deny rehearing on this issue.

With regard to its second concern, Macon PO disagrees with the ALJs' decision to deny admission of certain photographs offered by Ms. Cooley into the record. Although Macon PO does not identify the photographs in its application for rehearing, the photographs at issue appear to be those marked as Cooley Exhibits 3 through 9 attached to Cooley Exhibit B. The photographs were first provided to the parties the day before they were offered for admission. The ALJs denied admission at the December 18, 2013 evidentiary hearing. (See December 18, 2013 Transcript at 286-298) Pursuant to 83 Ill. Adm. Code 200.520(a), the appropriate manner to seek review of an ALJ ruling is to petition for interlocutory review of that ruling within 21 days from the date of the ruling. Macon PO offers no reason for why it failed to comply with this rule. Accordingly, the Commission should deny rehearing on this issue.

### **III. GARRETTS AND McWARDS**

The Garretts and McWards seek rehearing so that they can introduce a new route modification along the Pawnee-Pana segment. They note that the Commission adopted in the Second Order on Rehearing a similar route modification elsewhere along the same segment proposed by Justin Ramey and Ann Reynolds. (See Second Order on Rehearing at 38) The Garretts and McWards assert that under the 12 route selection criteria their proposed modification is preferable to what the Commission approved in the Second Order on Rehearing. The problem with their proposal is that the time for making such suggestions has long passed. Neither the Garretts nor the McWards indicate that they did not previously receive notice of this proceeding. The Commission should not grant another round of rehearing to consider an untimely route modification proposal.

### **IV. CORLEY**

Corley contends that the Commission erred in two important points when it rejected the MCPO route in the Second Order on Rehearing. First, with regard to impact on residential and non-residential structures, Corley disagrees with the Commission that neither of the two routes under consideration was preferable. Corley asserts that the MCPO is in fact preferable and that the Commission neglected to give sufficient weight to this criterion. Corley also argues that under the criterion concerning impacts on land use, the Commission did not properly consider the impact resulting from splitting farmland. The issues that Corley seeks to address on rehearing have been given sufficient consideration already and the Commission should deny Corley's application for rehearing.

### **V. MCPO**

MCPO contends that the conclusion in the Second Order on Rehearing relating to the Mt. Zion-Kansas segment is not supported by the record. MCPO states that there are inconsistencies in the discussion of this segment. MCPO also argues that it was deprived of due process and the conclusion on the Mt. Zion-Kansas segment is contrary to the weight of the evidence. MCPO wants the opportunity to address these and other issues on rehearing. The Commission has considered this segment twice; further consideration of the Mt. Zion-Kansas segment during a second rehearing is not warranted.

### **VI. TRUST GROUP**

The Trust Group maintains that it received no notice whatsoever regarding ATXI's proposed Illinois Rivers Project and has provided affidavits asserting such. Due to this alleged lack of notice, the Trust Group believes that it is entitled to rehearing. Once rehearing is granted, the Trust Group intends to demonstrate that the chosen route for the Pawnee-Pana segment is not the least cost route. Assuming for the sake of argument that the Trust Group did not receive notice of this proceeding, the Commission should still not grant their request for rehearing. The advantages and

disadvantages of the three route alternatives reviewed for this segment have already been contemplated and the Trust Group has raised no points that would tip the balancing of the multiple considerations against the selected route.

JDA/JSY