

Docket No: 12-0598
Bench Date: 04-16-14
Deadline: N/A

MEMORANDUM

TO: The Commission

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

DATE: April 2, 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 Motions for Stay filed on March 19, 2014 and March 20, 2014.

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 19, 2014 and March 20, 2014, the Morgan, Sangamon, and Scott Counties Land Preservation Group ("MSSCLPG") and Edgar County Citizens Are Entitled To Due Process ("Edgar County Citizens") respectively filed in this matter motions seeking a stay of the Commission's decisions. MSSCLPG requests a stay of the February 20, 2014 Second Order on Rehearing. Edgar County Citizens request a stay of the August 20, 2014 Order and February 20, 2014 Second Order on Rehearing. On March 31, 2014, ATXI filed a response to the motions for stay.

In support of their motions, both MSSCLPG and Edgar County Citizens assert that their members have an interest in that portion of the Illinois Rivers Project between

Meredosia and Pawnee. This portion of the project, however, does not pertain to Edgar County, therefore it is possible that Edgar County Citizens has made this statement in error. The movants request a stay of the orders in light of ATXI's apparent intention to proceed with the Illinois Rivers Project despite the number of pending appeals. They assert that the issuance of a stay will save both the time and money of litigants and the Commission without prejudicing any party.

In response to these requests, ATXI argues that the Commission lacks jurisdiction to entertain the motions for stay. ATXI points out that both MSSCLPG and Edgar County Citizens have each already filed a petition for review with the appellate court. ATXI asserts that the filing of a petition for review vests the appellate court with jurisdiction over the appeal and, more importantly, divests the Commission of jurisdiction. ATXI urges the Commission to clearly acknowledge that it has lost jurisdiction and deny the motions for stay. Even if the Commission was able to consider the merits of the motions for stay, ATXI contends that MSSCLPG and Edgar County Citizens are not entitled to the relief they seek. According to ATXI, the movants have made no showing that they are likely to prevail on the merits of their opposition to the orders, that 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.

In resolving this matter, it is appropriate to note at the outset that it appears that Supreme Court Rule 335(g) contemplates an agency such as the Commission having the first opportunity to grant a stay even if an appeal has been initiated. That being said, the Commission should deny both motions for a stay. MSSCLPG and Edgar County Citizens have not alleged sufficient facts to demonstrate that a stay is warranted. If an appellate court believes that the legal standard for a stay of a Commission order has been met, it can make such a ruling. Until that time, ATXI should be able to continue its work on the reliability improvements discussed in the orders. Moreover, it is not clear what standing Edgar County Citizens has to request a stay. Edgar County Citizens petitioned to intervene after the entry of the August 20, 2013 Order. An October 23, 2013 Administrative Law Judge ruling granted intervention for the limited purpose of accommodating Edgar County Citizens' efforts to file an appeal. In addition, the Commission denied Edgar County Citizens' application for rehearing of the August 20, 2013 Order. As a nonparticipant in this proceeding, it is questionable whether it has any standing to seek a stay.

There is no statutory deadline for Commission action on the motions for stay. But as a practical matter, a Commission decision on these matters sooner rather than later is preferable.

JDA/JSY