

Ameren Transmission Company of Illinois)
)
Petition for an Order Pursuant to Section)
8-509 of the Public Utilities Act)
Authorizing Use of Eminent Domain)
Power.)

2014 MAY -8 A 11: 07

Case No.: 14-0291
CHIEF CLERK'S OFFICE

OPENING BRIEF OF INTERVENERS KELLER'S AND DAGGETT IN OPPOSITION
TO AMEREN'S PETITION FOR AUTHORITY TO EXERCISE THE RIGHT OF
EMINENT DOMAIN

I. INTRODUCTION

The Intervening Objectors, being the Keller's and Daggett, submit the Commission should not now grant the power of eminent domain over their properties for the reasons as set forth below.

II. STATUTORY AUTHORITY AND STANDARD OF REVIEW

These Intervening Objectors repeat and re-allege the same as if incorporated herein, Paragraph 11 of Arthur H. Witte's Opening Brief.

III. CONTACTS WITH LANDOWNER

Other than contacts with the Keller and Daggett Landowners to obtain permission for making surveys and environmental studies and to present written offers to procure easements, no further contacts were made with Landowners by Ameren agents. The four Kellers as owners of three tracts and Ms. Daggett as owner of one tract then hired Attorney Lewis as their legal counsel. Attorney Lewis notified Ameren that all further contacts were to be through him as their Attorney. Ameren Agents, Diane Taylor, and then Christian Hollenkamp, had numerous telephone conversations and personal visits to Attorney Lewis's office to discuss the Keller and Daggett concerns and questions and even

though both gave assurances they would inform their supervisors as to our positions and would report back if their supervisors had any responses, no such responses were ever reported back to Attorney Lewis.

IV. EXPLANATION OF COMPENSATION OFFER

Keller's Cross Exhibit 2, and Keller's supplementary Exhibits B1 and B2, being the original and only offers by Ameren to the Keller's all included an amount for "Total Easement Compensation" and another amount for "Early Signing Bonus (if signed prior to 12-31-13)."

Mr. Rockrohr, a witness for the I.C.C., stated at page 4, lines 77 through 80, in his Direct Testimony as follows:

"Based upon Mr. Trelz's testimony, I understand ATXI's initial offers to be approximately 90% of the fee value of property included in the easement, and to include diminution of value for the remaining property due to the presence of the easement, - - -"

(Emphasis Added)

Ameren's Appraisals never addressed the issue of damages to land not taken and therefore of course never provided any dollar amount for damages to land not taken. And strangely enough, Ameren's Initial Offers, contrary to Mr. Trelz's testimony, did not include any amount for or even referenced "diminution of value to the remaining property due to the presence of the easement - - -."

Is it possible Ameren intended the "Early Signing Bonus" to be compensation for damages to land not taken? If so, why cut off such compensation after December 31, 2013?

To add to the confusion of the nature of Ameren's Initial Offers, Mr. Rockrohr orally testified Mr. Trelz in his written testimony made no mention of the offers including

an “Early Signing Bonus” and no mention that such Early Signing Bonus would be withdrawn by December 31, 2013. Even Mr. Trelz was confused about the timing of Ameren’s withdrawal of the Early Signing Bonus as he orally testified at the hearing the withdrawal was to be later on in 2014 and only after being shown Keller’s Cross Exhibit Number 2, did he realize Ameren’s Initial Offer cancelled the early signing bonus several months earlier in 2013.

From all of the above, these Intervenors submit that Ameren’s Initial Offers were not only confusing to the Landowners but were defective from the beginning. The offers did not include compensation for diminution of value to the remaining property as Mr. Trelz represented to the I.C.C. would be included. Ameren’s technique of pressuring landowners to sign quickly or lose the Early Bonus was not disclosed to the I.C.C.

V. REASONABLENESS OF COMPENSATION OFFERS

Ameren’s initial offers were unreasonable for the reasons more specifically set forth in paragraphs III, IV, and VI of this brief.

VI. RESPONSIVENESS TO LANDOWNERS CONCERNS:

A. Keller’s Cross Exhibit Number 1, being the letter dated February 11, 2014, sent to Ameren’s Agent, Christian Hollenkamp, specifically contains not only counteroffers for all four tracts but also raises the following concerns:

1. Paul and Jeanie Keller have plans to divide their 24 acre tract into lots of 5 acres per lot and the proposed Ameren line will kill the development of all four lots for residential purposes. The Ann Keller Trust will lose 3 major lots and Daggett will lost 16 five acre lots, many of which will be totally diminished in value.

2. All four of the Landowners tracts are bordered by or closely accessible to main hard surface roads.

3. All four of the Landowners tracts are improved by availability of the three major utilities for residential development, being electricity, natural gas, and public water.

4. The belief is expressed that Ameren's appraisers didn't study the surrounding area as they ignored mentioning Rural Residential and/or Commercial as Highest and Best use even in the obvious presence of roads and utilities available to the properties.

5. Ameren made no response to Keller's Affidavit Exhibit 2, Adams County Plat Book, page 18, which shows the massive presence of residential and small tracts surrounding the Landowners properties in Sections 19 and 30 and in the entire 3 and 4 mile area surrounding Quincy's southeast border.

6. Ameren's line will cause considerable damages to land not taken but Ameren's Appraisers never mentioned the concept of "damages to land not taken."

7. The Appraiser's opinions are weakened by not having current and sufficiently local comparable sales and Ameren's two Appraisers are from out of the State of Illinois and the one in Illinois lives many miles away.

8. Legal counsel provided a long list of comparable sales to Ameren's then agent, Diane Taylor.

B. The record is clear that Ameren completely failed to respond to the many concerns of the Landowners as set forth in Paragraph A above.

Mr. Rick Trelz, the Real Estate manager for ATXI, admitted on cross examination by Attorney Lewis that he had received and reviewed Attorney Lewis's letter dated February 11, 2014 addressed to Christian Hollenkamp, being Keller's Cross Exhibit Number 3. He agreed the letter raised many questions and matters of concern therein

raised by Attorney Lewis for all of his clients and he admitted his only answer to Attorney Lewis's letter was his letters to all of Attorney Lewis's clients addressed to them in care of Lewis at Lewis's law office in Quincy. (Keller's Cross Exhibit Number 1)

Finally, Mr. Trelz admitted he never addressed the concerns of Attorney Lewis, orally or in writing. There is no evidence in the record that any other agent for Ameren addressed any of the questions or concerns with Mr. Lewis or his clients as raised by Attorney Lewis's letter for his clients. Ameren did not call either Mr. Hollenkamp or Diane Taylor as witnesses at the hearing on May 2, 2014. Mr. Trelz's testimony therefore stands alone on the subject of whether or not Ameren entered into any effort to address landowner concerns and the only conclusion the Illinois Commerce Commission can reach is that Ameren did not.

C. Mr. Trelz stated in his Rebuttal Testimony, ATXI Exhibit 3.0 at page 14 on lines 281, 282 and 283 that "Ameren actively encouraged counsel for the Keller Properties to engage an independent appraiser should they seek to contest this designation," that the Keller Properties are agricultural. In his oral testimony on cross examination by Attorney Lewis, Mr. Trelz admitted the only communication, whether oral or written, with Attorney Lewis, was his letter to Lewis's clients, in care of Lewis. He further admitted his letter dated March 8, 2014 did not in any way encourage Attorney Lewis or his clients to engage an independent appraiser to contest the Ameren's Appraiser's agricultural designation or for any other reason. Likewise, there is no testimony by any other persons that such a suggestion was ever made to Attorney Lewis or his clients.

D. Mr. Rockrohr in his Direct Testimony, 1.E.E Staff Exhibit 1.00 on page 2, lines 37 through 44, testified that "issues surrounding landowner concerns - - - including pole placement, are relevant for a determination as to whether the Company has made

reasonable attempts to acquire the property and are within the scope of a Section 8-59 proceeding.”

Mr. Trelz, in an apparent effort to counter and deny pole placement as being a relevant factor as to whether Ameren made reasonable attempts to acquire the Landowners properties, stated in his Rebuttal Testimony, ATXI Exhibit 3.0 on page 13, lines 260 through 261, “- - ATXI’s appraisers concluded that there is no meaningful difference in value to a tract as a result of the number of poles on the property. Therefore, the appraisals did not need to consider the number or existence of poles.”

After reviewing one or more of the Appraisals, Mr. Trelz admitted that no such statement as quoted in the next preceding paragraph appeared on the appraisals.

Mr. Trelz also admitted Mr. Lewis’s clients were not furnished with plans showing the number of poles, the location of the poles on the easement area, and specifications for the type of poles to be used. How could the Landowners assess Ameren’s offers without having any knowledge as to what Ameren planned to permanently install on their property?

VII. USEFULNESS OF FURTHER NEGOTIATIONS

The Attorney for Landowners Kellers and Daggett, believe further negotiations can be very useful. The opportunity of both sides to discuss with each other their points of strengths as well as matters of weaknesses, can often result in opposing parties reaching mutual agreements.

It has been my experience over the past many years as the attorney for many landowners involved with potentially condemnation cases, many of the cases are settled by negotiations prior to condemnation and only a relatively few involve unsuccessful negotiations resulting in condemnations proceedings. I am confident that if the Illinois Commerce Commission gives further reasonable time to negotiate, at least some if not all

of the Keller and Daggett cases can be settled. Ameren is now aware of the Lubbert case involving property in another Ameren Project but fairly near the Keller and Daggett properties that was recently settled when Ameren's negotiating agent and I discussed the strengths and weaknesses of our respective positions. I would expect further negotiations in the Keller and Daggett case could reasonably end with the same result.

VIII. CONCLUSION

Ameren's efforts to condemn the Keller and Daggett properties is premature for the following reasons and should not now be permitted:

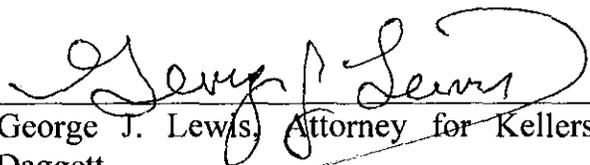
1. Ameren has provided no plans showing the number and placement of poles and specifications showing the type of poles to be permanently installed on the properties of the Landowners.

2. Other than Ameren's original offer and the landowner's counteroffers including their questions and concerns, Ameren has not participated in any negotiations. Not only has Ameren failed to respond in any way to the Landowners' counteroffers, they have totally failed to respond to the questions and concerns raised by the Landowners.

3. The Initial Offers set forth in calculation worksheets were confusing to Landowners and not in accordance with Ameren's representations to the I.C.C.

Ameren's Petition should be denied as to these Landowner's and the Commission should provide a reasonable additional time for negotiations. The commission should grant these Landowners such additional relief as it deems proper.

Respectfully Submitted,

By: 
George J. Lewis, Attorney for Kellers and
Daggett

George J. Lewis
Lewis, Longlett & Lannerd, LLC
435 Hampshire Street
Quincy, IL 62301
Telephone: 217-224-1240
Fax: 217-224-1259

CERTIFICATE OF SERVICE

George J. Lewis, an attorney, hereby certifies that he served copies of the foregoing Response to Ameren's Motion to Strike Affidavit of Attorney George J. Lewis on the individuals shown on the below Service List, via electronic mail, on April 25, 2014, and by U.S. Mail, 1st class, postage prepaid, inserted in an envelope addressed to Elizabeth A. Rolando, Chief Clerk, Illinois Commerce Commission, 529 East Capitol Avenue, Springfield, Illinois 62701, and placed in a U.S. Mail depository box on this 6th day of May, 2014 at about 5:00 p.m., CST.

Service List

John D. Albers	jalbers@icc.illinois.gov
Eric E. Dearmont	edearmont@ameren.com
Christine Ericson	cericson@icc.illinois.gov
Edward C. Fitzhenry	efitzhenry@ameren.com
Matthew L. Harvey	mharvey@icc.illinois.gov
Kathleen E. Ratcliffe	ratcliffe@whitt-sturtevant.com
Rebecca Segal	segal@whitt-sturtevant.com
Albert D. Sturtevant	sturtevant@whitt-sturtevant.com
Jackie K. Voiles	jvoiles@ameren.com
Greg Rockrohr	grockroh@icc.illinois.gov
Joe Obrien	mcnamara.evans@gmail.com
Jim Rapp	jrapp@srm.com
Brian R. Kalb	brk@bcpklaw.com