

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF )  
ILLINOIS )  
 ) Docket No. 14-0380  
Petition for an Order Pursuant to Section 8-509 of the )  
Public Utilities Act Authorizing Use of Eminent )  
Domain Power. )

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**INITIAL BRIEF OF INTERVENORS GLEN E. STOCK, IVA M. STOCK, AARON D.  
STOCK, JANELLE A. STOCK, JONATHAN E. STOCK AND REBECCA L. STOCK IN  
OPPOSITION TO AMEREN TRANSMISSION COMPANY OF ILLINOIS’ (“ATXI”)  
VERIFIED PETITION FOR AUTHORITY TO EXERCISE THE RIGHT OF EMINENT  
DOMAIN (THE “PETITION”)**

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I. **INTRODUCTION & SUMMARY OF POSITION**

The Commission must deny the Petition because ATXI failed to show that it is appropriate for the Commission to grant ATXI the power of eminent domain over the Stocks' properties. ATXI failed to show that it engaged in good faith negotiations with the Stocks or that future negotiations would be fruitless. ATXI retained a Texas appraisal firm named, Allen, Williford & Seale, Inc. ("AWS") to issue appraisals for the Stocks' farms. The real estate appraiser trainees making significant contributions to the appraisals, however, were not licensed in Illinois. The Illinois Department of Financial and Professional Regulation (the "Department") and 225 ILCS 458/5-20 requires all individuals making significant contributions to an appraisal hold an Illinois license. Accordingly, ATXI's appraisals, which were the basis of its initial offers to the Stocks, are invalid. Moreover, the appraisals ATXI submitted to the Stocks were not complete. If ATXI followed Illinois law and made offers based on a legal and complete appraisals, the Stocks may be able to reach an agreement on compensation. For these reasons and the arguments that follow, the Commission must deny the Petition as it relates to the request to proceed with eminent domain against the Stocks.

II. **RELEVANT BACKGROUND**

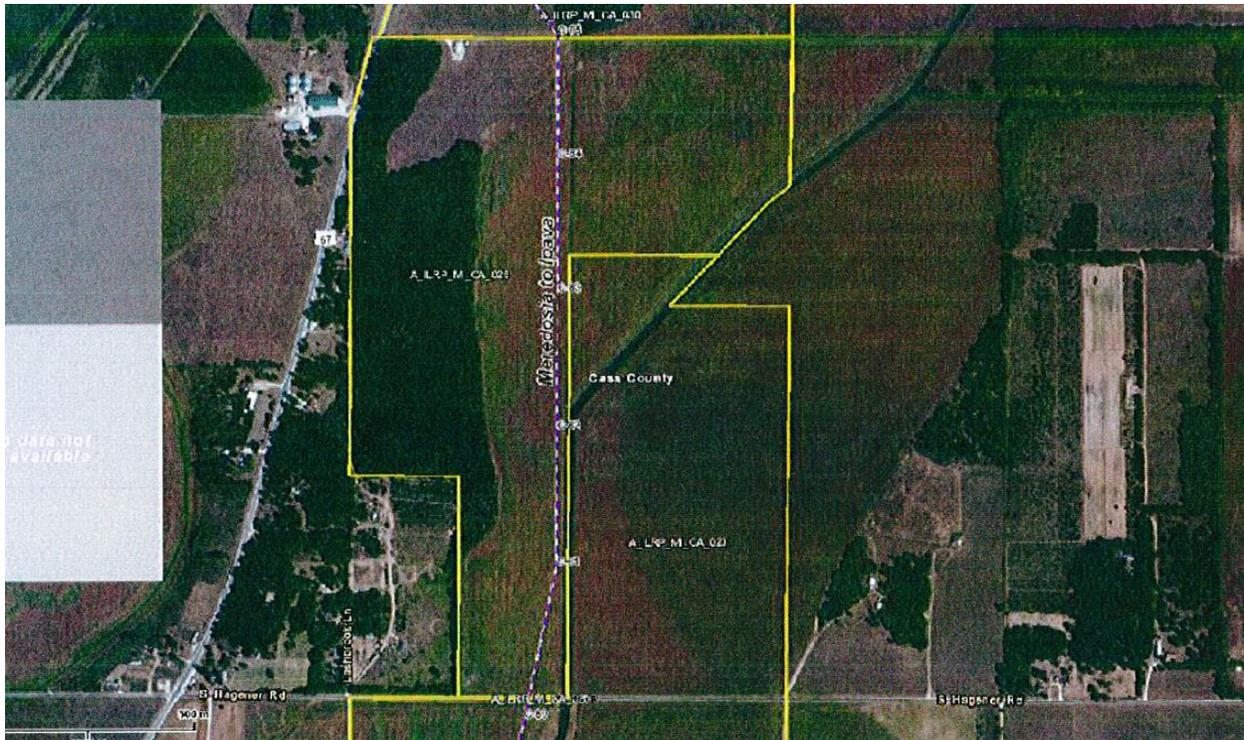
**1. The Properties**

ATXI is petitioning the Commission to take a portion of land belonging to Aaron Stock, Janelle Stock, Jonathan E. Stock and Rebecca L. Stock, commonly referred to by ATXI as A\_ILRP\_MI\_CA\_36 and A\_ILRP\_MI\_CA\_45. A true, correct and accurate picture depicting these tracts and ATXI's proposed route was attached to the direct testimony of Aaron Stock as Stock Exhibit 1.01:



The Stocks refer to these tracts collectively as the “North Farm” and will be referred to as such herein.

ATXI is also petitioning to take a portion of land belonging to Iva Stock’s land trust, which is commonly referred to by ATXI as A\_ILRP\_MI\_CA\_026. A true, correct and accurate picture depicting this property was attached to the direct testimony of Aaron Stock as Stock Exhibit 1.02.



The Stocks refer to this property as the South Farm and it will be referred to as such herein.

**2. Aaron Stock**

As stated above, Aaron Stock is a co-owner of the North Farm and operates the South Farm for his mother’s Trust. Mr. Stock has been a farmer for 31 years. (Stock Dir. 3:46-47.) He also has experience in land valuation. (Id. at 3:51-63.) As a farmer and landowner in Cass County, Mr. Stock follows land sales and auctions on a weekly basis. (Id.) He follows this information because he is constantly looking for buying opportunities to expand his farming operation. (Id.) Mr. Stock is familiar with the various factors that impact land valuation, which includes, the county tax rates on farmland, income possibilities and drainage and slope issues. (Id.) He is also familiar with the type of things that drive farmland prices in Cass County, including, but not limited to, commodity prices, soil type productivity index, interest rates and whether the land has drain tiles and irrigation equipment. (Id.)

### **3. The North Farm**

The North Farm consists of two tracts: A\_ILRP\_MI\_CA\_36 consists of 280 acres and A\_ILRP\_MI\_CA\_45 consists of 146.90 acres. (Id. at 3:67-69.) The North Farm is used for agriculture and both tracts are improved with a center-pivot irrigation system and drainage tile. (Id. at 4:74-75; 5:119-120.) The Stocks charge a fee to the landowner between A\_ILRP\_MI\_CA\_36 and A\_ILRP\_MI\_CA\_45 for use of the irrigator. (Id. at 4:78-81.) The Stocks grow a premium, commercial seed corn for Monsanto on the North Farm. (Id. at 4:85-95.) The North Farm is desirable to a company like Monsanto because the North Farm can consistently produce high volumes of commercial seed corn. (Id.) Monsanto has entered into seed corn contracts with the Stocks to grow the parent seed corn on the North Farm. (Id.) Under such an arrangement, Monsanto gives the Stocks the parent seed to grow, and after harvest the Stocks give the commercial seed end-product to Monsanto. (Id.) The agreement contemplates a bailor-bailee relationship whereby the Stocks do not take an ownership interest in the seed. (Id.) Monsanto retains all ownership rights to the commercial seed the Stocks plant on the North Farm. (Id.)

### **4. The South Farm**

The South Farm consists of 149.70 acres. (Id. at 7:165-167.) A majority of the property is used for agriculture. (Id. at 7:172-173.) The west side of the tract is approximately 40 acres of timber. (Id. at 7:166-167.) Mr. Stock grows corn and soybeans, and occasionally specialty crops, on the South Farm. (Id. at 7:174-175.)

## **III. ARGUMENT**

ATXI cannot show that (1) it engaged in good faith negotiations with the Stocks for either the North Farm or the South Farm or (2) that continued negotiations would be fruitless.

As set forth in more detail below, ATXI has provided misleading evidence in its attempt to acquire eminent domain rights over the North Farm and South Farm.

## **1. Applicable Law**

ATXI petitions the Commission for an order pursuant to Section 8-509 of the Public Utilities Act authorizing use of eminent domain power. 220 ILCS 5/8-509 provides in relevant part as follows:

“When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.”

In determining whether it is appropriate to grant a utility the right to proceed with eminent domain, the Commission generally examines the number of contacts between the parties, the offer made by the party seeking the easement or other encumbrance and the likelihood that further negotiations will be fruitless. Corn Belt Electric Coop., Inc., 1996 WL 33659860 (Ill. Commerce Comm. 1996). The Commission also looks to the nature and scope of the negotiation process to determine whether or not the negotiations had been undertaken in a reasonable and diligent manner, including the number of discussions and the manner in which the offers were developed. In re Illinois Consolidated Tel. Co., 1993 WL 100312 (Ill. Commerce Comm. 1993).

## **2. The Reasonableness of Compensation Offers.**

### **(i) ATXI utilized appraisals drafted by real estate appraiser trainees who were not licensed in Illinois**

ATXI submitted an appraisal dated October 18, 2013 for the North Farm. (See Stock Ex. 1.03.) ATXI submitted an appraisal dated September 25, 2013 for the South Farm. (See Stock Cross Ex. 1.0, D.R. 1.04.) The two appraisals will be collectively referred to herein as the

“Appraisals.” The Appraisals were signed by three appraisers: Albert Allen, Carlo Forni and Bryan Glass. The Appraisals contained several certifications, one of which stated as follows:

- Robert Dees, Daniel Hughes, Chase Gilbert, and Andrew Langford have provided significant real property appraisal assistance by gathering pertinent property and market data. Additionally, Robert Dees provided significant real property appraisal assistance by compiling this report.

ATXI admits that Robert Dees, Daniel Hughes, Chase Gilbert and Andrew Langford provided real property appraisal assistance for the North Farm and South Farm by gathering pertinent property and market data. (Stock Cross Ex. 1.0, D.R. 2.01.) These individuals researched information pertinent to the subject properties and compiled draft appraisals for the appraisers to review and complete. (Stock Cross Ex. 1.0, D.R. 2.05.) Robert Dees provided significant real appraisal assistance by compiling the reports for the North Farm and South Farm. (Stock Cross Ex. 1.0, D.R. 2.02.) Robert Dees, Daniel Hughes, Chase Gilbert and Andrew Langford are appraiser trainees in the state of Texas. (Stock Cross Ex. 1.0, D.R. 2.02.) As part of their contributions to the Appraisals, each of these individuals were based in an AWS field office in Chatham for approximately five months in the first half of 2013 in the supporting role with respect to the appraisals performed by AWS for the Illinois Rivers Project. (Stock Cross Ex. 1.0, D.R. 2.05.) None of these individuals are licensed to perform appraisal services in Illinois. (Stock Cross Ex. 1.0, D.R. 2.04.)

225 ILCS 458/15-10(a)(18) provides:

(a) The Department may suspend, revoke, refuse to issue, renew, or restore a license and may reprimand place on probation or administrative supervision, or take any disciplinary or non-disciplinary action, including imposing conditions limiting the scope, nature, or extent of the real estate appraisal practice of a licensee or reducing the appraisal rank of a licensee, and may impose an administrative fine not to exceed \$25,000 for each violation upon a licensee for any one or combination of the following:

...

(18) Failing to include within the certificate of appraisal for all written appraisal reports the appraiser's license number and licensure title. All appraisers providing significant contribution to the development and reporting of an appraisal must be disclosed in the appraisal report. It is a violation of this Act for an appraiser to sign a report, transmittal letter, or appraisal certification knowing that a person providing a significant contribution to the report has not been disclosed in the appraisal report.

225 ILCS 458/15-10

ATXI admits Robert Dees, Daniel Hughes, Chase Gilbert and Andrew Langford provided significant real property appraisal assistance for the North Farm and South Farm as stated in their appraisal certification. However, the certification does not comply with the Real Estate Appraiser Licensing Act because it failed to state the licensing information of those providing significant contributions. Moreover, ATXI admits that all four individuals were real estate appraiser trainees in Texas. (Stock Cross Ex. 1.0, D.R. 2.02.) In Illinois, a person providing significant real property appraisal assistance requires appraiser competency and, as such, requires an Associate Real Estate Trainee Appraiser license.

225 ILCS 458/5-20 sets forth the requirements for a person to obtain a license as a real estate trainee appraiser:

§ 5-20. Application for associate real estate trainee appraiser. Every person who desires to obtain an associate real estate trainee appraiser license shall:

(1) apply to the Department on forms provided by the Department accompanied by the required fee;

(2) be at least 18 years of age;

(3) provide evidence of having attained a high school diploma or completed an equivalent course of study as determined by an examination conducted or accepted by the Illinois State Board of Education;

(4) personally take and pass an examination authorized by the Department; and

(5) prior to taking the examination, provide evidence to the Department that he or she has successfully completed the prerequisite classroom hours of instruction in appraising as established by rule.

225 ILCS § 458/5-5

225 ILCS 458/5-5(a) states that it is unlawful for a person to act as an associate real estate trainee without a license issued under the Act. Section 458/5-5(a) further states that a person who violates this subsection is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for any subsequent offense.

Moreover, the Department has a history of issuing cease and desist letters and civil penalties to individuals who violate § 458/5-5(a).<sup>1</sup>

The legislative intent in enacting the Act was to evaluate the competency of persons engaged in the appraisal of real estate and to license and regulate those persons for the protection of the public. *See* 225 ILCS 458/1-5. ATXI and AWS flaunted the public policy and licensing requirements by submitting to the Stocks appraisals for the North Farm and South Farm where significant real appraisal assistance was provided by unlicensed real estate appraiser trainees.

The undersigned could not locate a case in which a utility sought permission to proceed with eminent domain where the offers were accompanied by defective, illegal appraisals. The Stocks refer the Commission to Government of the Virgin Islands v. Approx. 21.59 Acres of Land, 2006 WL 559238 (V.I. 2006)<sup>2</sup> for guidance. In Virgin Islands, the Government of the Virgin Islands (the “Government”) filed an action for condemnation of property. Before entering an order vesting title to the Government, the court directed the Government to elaborate on the

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<sup>1</sup> See Department website listing disciplinary action against individuals practicing without a license: <http://www.idfpr.com/News/Disciplines/DiscReports.asp>. See also [http://www.idfpr.com/Forms/DISCPLN/2013\\_12dis.pdf](http://www.idfpr.com/Forms/DISCPLN/2013_12dis.pdf)

<sup>2</sup> A copy of Government of the Virgin Islands v. Approx. 21.59 Acres of Land, 2006 WL 559238 (V.I. 2006) is attached hereto as Exhibit A for the convenience of the Commission.

qualifications of the appraisers utilized in arriving at the “just compensation” amount to be deposited with the court. The Government was required to engage in pre-condemnation negotiation with the property owner under 31 V.I. Code Ann. § 231a.(c), which is somewhat similar to the pre-filing negotiation procedure required under a § 8-509 proceeding. The court denied the Government’s request to proceed with condemnation because, in part, one of the appraisals submitted to support “just compensation” was drafted by an appraiser who did not hold an appropriate real estate appraisal license. *Id.* at \*10.

The case of Timmerman v. Grain Exchange, LLC 394 Ill. App. 3d 189, 915 N.E.2d 113 (5<sup>th</sup> Dist. 2009) is also persuasive authority. The Timmerman case provides that once a statute imposes licensure as a precondition for operation and provides a penalty for its violation, a contract for the unlicensed performance of that act is void. *Id.* at 203, 125. Citing In re C&S Grain Co., 47 F.3d 223 (7<sup>th</sup> Cir. 1995).

The general rule of Timmerman—that a contract to be performed by someone with a license is void when the person loses his license—may be extended to this situation. A document that is created by someone who lacks the authority to create it is void. The Commission should treat the illegal Appraisals as void *in ab initio*. Without a valid appraisal, ATXI cannot be said to have made an informed, good-faith offer to the Stocks on either the North Farm or the South Farm.

**(ii) ATXI’s appraisal of the North Farm is incomplete and inaccurate**

Assuming, *arguendo*, the Commission overlooks the defective Appraisals ATXI submitted to the Stocks, the Commission should nevertheless deny the Petition for the North Farm because it is incomplete.

The appraisal of the North Farm is incomplete because it did not reference that the North Farm is used to grow a premium crop. The Stocks have seed corn contracts with Monsanto to grow commercial seed corn on the North Farm. Thus, the North Farm generates more revenue than typical farms growing standard commercial crops. Mr. Stock has met with representatives from Contract Land Staff and informed them of the type of crop grown on the North Farm and ATXI has refused to modify the appraisal or offer of compensation to reflect the unique income opportunities of the North Farm.

In addition, the appraisal of the North Farm did not reflect that the North Farm has drainage tiles. Drainage tiles impact the value of farmland in Cass County. Mr. Stock testified that drain tiles allow for excess water in soil to flow in the tile line to a drainage ditch. It assists in drying out ground. Currently, it can cost \$800 to \$900 an acre to tile a field.

It is understandable that the appraisal failed to account for the unique qualities of the North Farm given the limited investigation AWS committed to it. ATXI did not contact any of the Stocks to discuss the North Farm or South Farm. (Stock Cross Ex. 1.0, DR 1.08.) AWS appraisers Albert Allen and Carlo Forni only spent one day viewing all of the properties in Cass County (Stock Cross Ex. 1.0, DR 1.12) and they only viewed the North Farm and South Farm from the public right-of-way. (Stock Cross Ex. 1.0, DR 1.13.) This limited investigation by out-of-state appraisers did not give the appraiser sufficient USPAP required geographic competency as required by USPAP to appraise the North Farm, as evidenced by the important land features the appraisal of the North Farm failed to take into account.

The appraisal of the North Farm contemplated that the Appraisals would be based on “extraordinary assumptions,” which if false, could alter the appraiser’s opinion or conclusions. Specifically, the appraisal Scope of the Appraisal states:

At the request of the client, the subject site inspection has been limited to a viewing of the property from the public right-of-way and an analysis of local public records and available aerial and topographic mapping. As a result, the appraiser has had no contact or interview with the property owner, nor has an on-site inspection been performed. Therefore, this valuation is subject to the “extraordinary assumption” that all improvements and site conditions associated with the subject property are as reported in the public record and are visible from the public right-of-way. Extraordinary assumption is defined by USPAP as “an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions.

(Stock Exhibit 1.03, p. 3.)

Per the appraisers’ self-imposed extraordinary assumption, their valuations are invalid as they were aware of neither the Monsanto contract nor the tiling on the North Farm

(iii) **ATXI’s proposed route and modified route are unsatisfactory and the appraisal and initial offer failed to take into account damage to the remainder.**

ATXI’s initial offer contemplated placing the transmission line across the middle of the Stocks’ farmland, as the map depicts on page 5 above. The original route imposed a tremendous hardship on the farming operation of the South Farm. For example, the original route interfered with farming maneuverability and efficiency, aerial spraying and weed control. The Stocks requested ATXI change the route further west to go through the timber. ATXI, through its land agent, forwarded the Stocks a picture of the proposed re-route for the line, which is set forth in Stock Exhibit 1.05, and herein as follows:



The re-route does not go far enough west to clear the Stocks’ farmland. The land agent explained to the Stocks that the line could not be moved any further west because of an existing shed and grain bin. This response, however, does not explain why the route cannot enter the South Farm from the south further west and then move around the existing structures as it crosses the northern border. The Stocks have submitted a proposed re-route depicting this option as Stock Exhibit 1.06. This would address the Stocks’ concern with keeping the transmission line out of their farmland, but still address ATXI’s concern of keeping the transmission line away from existing structures.

**(iv) ATXI’s attempts to negotiate with the Stocks was not reasonable.**

The Stocks anticipate that ATXI will argue that any flaws in the appraisals are within the purview of the circuit court, not the Commission. The Commission, however, has found that