

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.)	
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APPLICATION PURSUANT TO SECTIONS)	
8-503, 8-509 AND 15-401 OF THE PUBLIC)	
UTILITIES ACT/THE COMMON CARRIER)	Dkt. No. 07-0446
BY PIPELINE LAW TO CONSTRUCT AND)	
OPERATE A PETROLEUM PIPELINE AND)	
WHEN NECESSARY TO TAKE PRIVATE)	
PROPERTY AS PROVIDED BY THE LAW)	(Reopen)
OF EMINENT DOMAIN)	
)	
)	
)	

**RESPONSE OF ENBRIDGE PIPELINE (ILLINOIS) L.L.C.
TO MOTION TO DISMISS AND IN THE ALTERNATIVE FOR OTHER RELIEF**

Enbridge Pipelines (Illinois) L.L.C., now known as Illinois Extension Pipeline Company (“IEPC”), hereby responds to the “Motion to Dismiss and in the Alternative For Other Relief” (“Motion to Dismiss”) filed by the Turner Intervenors on September 15, 2014. For the reasons set forth below, the Motion To Dismiss should be denied in its entirety.

INTRODUCTION

The Motion To Dismiss is the latest of a string of filings by the Turner Intervenors each of which has had the same goal -- to delay the scheduled hearings and otherwise find an excuse to prevent the Administrative Law Judge (“ALJ”) and the Illinois Commerce Commission (“ICC”) or “Commission”) from rendering a decision in this reopened Docket No. 07-0446

proceeding for as long as possible.¹ Each of those preceding attempts at delay has properly been denied by the ALJ.²

Turner Intervenors' Motion To Dismiss should be denied as well. The Motion To Dismiss is even more unfounded than its predecessors. Although it alleges that it is "supported factually by the record" (Motion To Dismiss, at 1), there is no record support for the theories it propounds, as evidenced by the absence of any citations to the record or admitted evidence. Equally important, the theories propounded in the Motion To Dismiss are unsupported by any case law or rules; indeed, they are *contrary to* applicable law and rules.

Perhaps most disturbing, the Turner Intervenors make startling and unfounded accusations of unlawful *ex parte* contacts by Staff, denials of due process by the ALJ, and improper "backroom dealmaking" by IEPC and Staff. Each of the parties in this case has from time to time engaged in overheated rhetoric. Overheated rhetoric is one thing; false accusations of malfeasance are quite another. Such reckless accusations should not be countenanced.

ARGUMENT

Although not clearly delineated, the core assertions underlying the Turner Intervenors' Motion to Dismiss are: (1) IEPC hid the fact that it had decided to reduce the SAX pipeline's diameter from 36-inches to 24-inches until *after* it obtained an Order from the Commission in Docket No. 13-0446 granting it eminent domain authority; (2) Staff engaged in improper *ex*

¹ As explained in Staff's Scheduling Proposal, the Commission by rule must render a decision by no later than November 27, 2014. Staff Of The Illinois Commerce Commission Schedule Proposal, at Para. 10 (July 25, 2014).

² The Turner Intervenors' Motion Regarding the Schedule, filed August 18, 2014, and their Motion to Compel, filed August 28, 2014, were both denied on September 5, 2014. On September 8, 2014, the Turner Intervenors filed a Motion for Cancellation of Hearing and Creation of an Appropriate Schedule, which was denied on September 10, 2014.

parte contracts with IEPC to “grease the skids” for approval of the change in the SAX pipeline’s diameter; (3) the investment in SAX of Lincoln Pipeline LLC and the shipping arrangements of Marathon Petroleum Co. on SAX are proof that SAX is not being built as a common carrier facility, but as a private or contract line; and (4) the ALJ and the Commission Staff have been complicit in backroom deals that have made all of those alleged wrongs possible. Each of these assertions is contrary to the record, the law, or both.

The assertion that IEPC deliberately hid the fact that it intended to build a 24 inch pipeline instead of a 36-inch pipeline until it had been granted eminent domain authority in Docket No. 13-0446 is incorrect and contrary to the record. The record shows that from the time IEPC reenergized the SAX project late in 2012, it made clear in public statements that it was considering installing a 24-inch pipeline instead of a 36-inch pipeline. Reply of Enbridge Pipeline (Illinois) L.L.C. On Motion To Reopen And Amend Order Concerning Diameter Of The Southern Access Extension Pipeline, at 9-12 (June 13, 2014) (“Reply On Motion To Reopen And Amend”). These facts are admitted evidence. Tr. 1130-31. The record is also clear that IEPC did not make the final decision to install a 24-inch SAX pipeline until March 11, 2014, when IEPC issued its first purchase order for 24-inch pipe. Until that time, events, such as an increase in shipper interest and volumes, might have caused IEPC to use a pipe greater than 24-inches in outside diameter. Tr. 1154-55. Indeed, Mr. Monthei, testifying for IEPC, was clear that IEPC’s business people want to assess market conditions “right up until they’re not able to do it,” and then “based on that assessment and understanding of market conditions, they’re either going to propose to design this pipeline for increased values based upon . . . most current market conditions and market trends or they’re going to propose less, smaller values if that’s what the market trends demand.” Tr. 1254. He further testified that “IEPC was looking at different sizes

for the pipeline up until we ordered the pipeline” and “[w]e actually thought it was going to be 30-inches right up until we made the pipe order.” Tr. 1255.

The record is equally clear that the reason why IEPC did not file to reopen and amend the certificate granted in Docket No. 07-0446 before it did on May 19, 2014, had to do with its belief that it had inherent authority to make that change without going back to the Commission. This belief was based on facts such as that IEPC had publicly revealed that it was considering installing a 24-inch SAX line but that until April 2014, the Commission Staff never suggested that it was necessary to reopen Docket No. 07-0446 to amend the certificate. Reply On Motion To Reopen And Amend, at 12. It was also IEPC’s belief, based on subsequent Commission orders sanctioning discretion in pipe sizing up to some maximum that it had implicit authority under the certification order in Docket No. 07-0446 to install a smaller pipeline if business conditions and customer demand so warranted. *Id.*, at 12. This is particularly true where, as here, the changes in the pipeline diameter would not impose any greater burden on landowners. *See Talty v. Commonwealth Edison Company*, 38 Ill. App. 3d 273 (1976). *See also* Memorandum from ALJ Larry Jones to the Commission, dated June 2, 2014, recommending denial of the Application for Rehearing filed by the Pliura Intervenors on May 27, 2014, at 2. The reality, as discussed further below, is that it was ICC Staff, based on phone calls and an email with IEPC in April and May of 2014, *while Docket No. 07-0446, the certification docket, was closed*, that convinced IEPC that it should seek to reopen Docket No. 07-0445 and amend its certificate. Staff’s Response to Turner Intervenors’ Motion of August 27, 2014, Dkt. No. 07-0446, ¶ 6 (Aug. 29, 2014).

The assertion by the Turner Intervenors that Staff violated the *ex parte* rules when it had conference calls and sent an email to IEPC in April 2014 urging IEPC to move to reopen and

amend the Docket No. 07-0446 certificate for a 24-inch pipeline is baseless. Staff has explained in detail why, under the rules of the Administrative Procedures Act, none of these communications violated the *ex parte* rules. See Staff Of The Illinois Commerce Commission Response To Turner Intervenors' Motion Of August 27, 2014 (August 29, 2014); Staff Of The Illinois Commerce Commission Response To Turner Intervenors' Hearing Memorandum (September 10, 2014); Staff Of The Illinois Commerce Commission Response To Turner Intervenors' September 7, 2014 Motion (September 10, 2014). The Turner Intervenors have made no attempt to explain in what respects Staff's exposition of the *ex parte* rules and how Staff's conduct complied with those rules is incorrect, nor can they.

The Turner Intervenors have tried to obscure those indisputable facts by suggesting that "Upon learning what Enbridge was doing in the middle of April, 2014, the ICC Staff, turned its back on the Public" because, according to Turner Intervenors, "[t]he ICC staff had a duty to bring the proceedings in Case 13-0446 to an immediate halt and file a Motion to Dismiss based on either or both the failure of Enbridge to disclose its new plans or the failure to request eminent domain authority based on well-grounded fact and law." Motion To Dismiss, at 5. Those assertions founder on the facts. In particular, the assertions ignore the sequence and timeline of events in Docket No. 13-0446 as they relate to Staff's knowledge of IEPC plans to install a 24-inch pipeline. As Staff has pointed out, the issue of the 24-inch pipeline was first raised in Docket No. 13-0446 in the Pliura Intervenors' Reply Brief On Exceptions of April 17, 2014. That Reply Brief On Exceptions was properly stricken, as urged by IPEC and by Staff, because the Commission's Rules provide that "Parties and Staff shall not raise an argument in their replies to briefs on exception that is not responsive to any argument raised in any other parties, or Staff's brief on exceptions." 83 Ill. Admin. Code 200.830(d). Because IEPC and Staff had only

made technical corrections/exceptions to the Proposed Order, the Pliura Intervenors' Reply Brief on Exceptions properly was not considered in the Docket No. 13-0446 proceeding.

Not only do the Turner Intervenors ignore these facts, but they also fail to take into account that on the very next day -- April 22, 2014 -- ALJ Jones sent his Memorandum to the Commission recommending the grant of eminent domain authority. That meant the case was in the Commission's hands for a decision. As Staff witness Mark Maple testified, the initial phone call from Staff to IEPC "didn't have anything to do with the '13 case," because "[t]hat case, as far as Staff was concerned, was concluded," and "[w]e were waiting on the Final Order, I believe." Tr. 1298. In fact, the Commission issued its Final Order in Docket No. 13-0446 on April 29, 2014, one week later. There was therefore no vehicle under the Commission's rules for Staff or any other party to raise the 24-inch issue with the Commission even if there had been a legitimate basis for a filing (and there was not) until Applications for Rehearing could be filed in late May 2014. The Pliura Intervenors did in fact file an Application for Rehearing raising the 24-inch issue on May 27, 2014, which was denied. Notably, the Application for Rehearing was filed eight days *after* IEPC filed its Motion To Reopen And Amend Docket No. 07-0446 to deal with the issue. The Turner Intervenors did not seek rehearing in Docket No. 07-0446.

In any event, Docket No. 13-0446 plainly was not the proper proceeding in which to raise the 24-inch issue. As IEPC has previously pointed out, the Order in Docket No. 13-0446 grants eminent domain authority to IEPC to obtain "easement rights along the pipeline that was certificated in Docket No. 07-0446." Order, Docket No. 13-0446, at 37 (April 29, 2014). Thus, even if one were to assume that the SAX certificate needed to be amended to reflect use of a 24-inch line, the Docket in which to do so was Docket No. 07-0446, the certification docket. In April and early May 2014, that docket was closed. Thus, as Staff has explained, it properly

contacted IEPC during that time frame stating its view that IEPC should consider filing a motion to reopen Docket No. 07-0446 and seek to amend the certificate, which is what IEPC did on May 9, 2014. As explained, none of those contacts violated the *ex parte* rules.³ Indeed, far from engaging in any “backroom deals” to the disadvantage of the Turner Intervenors, as Staff has pointed out, “it is through IEPC Illinois [sic] seeking a reopening of Docket No. 07-0446 and an amended certificate, at Staff’s urging, that the Turner Intervenors [sic] and others have been afforded the opportunity to raise their concerns in this reopened matter.” Staff Of The Illinois Commerce Commission Response To Turner Intervenors September 7, 2014 Motions, at Para. 13 (September 10, 2014).

Finally, with respect to the change from a 36-inch pipeline to a 24-inch pipeline, the Turner Intervenors argue that “Enbridge is not making changes, like it suggests the ICC has done in the past. The Enbridge example was for an existing pipeline. Landowner rights are still unadjudicated in this case.” Motion to Dismiss, at 7. Presumably by their reference to the “Enbridge example” the Turner Intervenors are addressing Enbridge’s reliance in Docket No. 13-0446, in part, on *Talty v. Commonwealth Edison Company*, 38 Ill. App. 3d 273 (1976). *Talty* was also relied on by the ALJ in his Memorandum to the Commission in Docket No. 13-0446 recommending denial of the Pliura Intervenors’ Application for Rehearing in that docket:

Although not a Section 8-509 case, one of the decisions that address the relevance of incremental burdens on landowners is *Talty v. Commonwealth Edison Company*, 38 Ill. App. 3d 273 (1976). There the Appellate Court examined the scope of the Commonwealth Edison Company’s (“ComEd”) certificate of convenience and necessity, which authorized a 220 kilovolt (“KV”) line, and the easements which affected landowners. The

³ It is also worth noting that, although each of the three communications between Staff and IEPC about which Turner Intervenors complain properly related to reopening Docket No. 07-0446, only the first conference call occurred before the Commission issued its Final Order in Docket No. 13-0446.

Appellate Court upheld the circuit court's holding that ComEd's replacement of a 220KV line with a 345 KV line was permissible, over landowners' objections, observing in part that it would not increase the burden, on the underlying estate

ALJ Memorandum, Dkt. No 13-0446, at 2-3 (June 2, 2014). *Talty* is directly relevant because neither the Turner nor the Pliura Intervenors have made any attempt to show that the use of a 24-inch SAX pipeline instead of a 36-inch SAX pipeline would increase the burden on their clients' properties; indeed, they cannot make such a showing.

The Turner Intervenors seek to avoid *Talty* by declaring that "Landowners rights are still unadjudicated in this case." Motion To Dismiss, at 7. That is incorrect. IEPC has a valid and lawful certificate for the SAX pipeline and its route based on the Order in Docket No. 07-0446. That Order was upheld on appeal and has never been stayed. IEPC also has a valid and lawful Order in Docket No. 13-0446 granting eminent domain authority for identified tracts along the approved SAX pipeline, an Order which also has not been stayed. Moreover, IEPC has not yet installed any 24-inch pipe. Thus, as matters now stand, landowner rights on the SAX route *have* been adjudicated, and IEPC has not violated either Order. Moreover, if the ICC approves IEPC's use of a 24-inch pipe by November 27, 2014, as required, that approval will automatically be applicable to the eminent domain authority granted in Docket No. 13-0446. The Turner Intervenors' demand that the Commission should act as if there were a blank slate is therefore incorrect.

The Turner Intervenors next assert that Staff failed to investigate the facts pertaining to Lincoln Pipeline LLC and the Marathon Petroleum Co. shipping arrangements on SAX. Motion To Dismiss, at 6. The reason why the Turner Intervenors have sought information about Lincoln Pipeline LLC and Marathon is to support a theory that SAX is not a common carrier line, but a

private line for Marathon. They assert that Marathon and one other committed shipper will be using much of the SAX pipelines capacity, and that “[o]nly speculation supports common carrier shipping.” Motion To Dismiss, at 7. That argument is contrary to law and unsupported by the facts. The Turner Intervenors either do not understand what it means to be a common carrier or they choose simply to ignore the law.

A common carrier by pipeline, as with any common carrier, is a carrier that holds itself out to carry the product of any shipper who requests transport and is willing to pay the FERC-approved tariff for interstate movements, so long as there is available capacity. *See, e.g., Doe v. Rockdale Sch. Dist.*, No. 84, 287 Ill.App.3d 791, 794 (3d Dist. 1997) (“A common carrier undertakes for hire to carry all persons indifferently, who may apply for passage so long as there is room and there is no legal excuse for refusal”). IEPC meets those criteria regarding its SAX pipeline. The fact that despite so holding itself out, at this point in time two committed shippers – one being Marathon -- are expected to be using about two-thirds of the pipeline's capacity (Tr. 1344-45) does not cause IEPC to cease being a common carrier and instead to be a contract carrier. As stated by the appellate court in *Kenna v. Calumet, H. & C.E.R. Co.*, 206 Ill. App. 17, 27-28 (1st Dist. 1917), *aff'd*, 284 Ill. 301 (1918):

The true test of whether a corporation is or is not a common carrier seems to us to be succinctly stated by the United States Supreme Court in its opinion in the Tap Line Cases, 234 U.S. 1, cited by appellant, in which the court said, at page 24: It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber, and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business, which is the real criterion determinative of its character.

A similar conclusion was reached by the same appellate court in a case involving this Commission. In *Holland Motor Exp., Inc. v. Illinois Commerce Comm'n*, 165 Ill. App. 3d 703 (1st Dist. 1987) plaintiffs appealed the trial court's order affirming the defendant's authority as a common carrier. The court held that the defendant was a common carrier despite the fact that the defendant had entered into certain limited contracts and dedicated certain equipment to two shippers. The appellate court stated (internal citations omitted):

The seventh circuit court in *Fleming v. Chicago Cartage Co.*, (7th Cir. 1947), 160 F.2d 992 stated that a common carrier may enter into certain limited written contracts, for instance, to assign some of its equipment and services to a particular shipper for a certain period of time. However, a common carrier must still hold itself out to the public regarding its services. That is, in determining whether a common carrier is acting within its authority, consideration may be made regarding whether anyone has ever been refused any of the services which the carrier purports to furnish.

Id. at 714-15.

The Turner Intervenors not only ignore that Illinois law on what it means to be a common carrier, but they ignore that Enbridge was certified to operate as a common carrier pursuant to the Certificate in Good Standing granted by the Commission in Docket No. 07-0446. The certificate, dated July 8, 2008, states that Enbridge is certified “to construct, operate and maintain the proposed 36-inch pipeline [the SAX Pipeline] and to operate as a common carrier by pipeline.” Order, Dkt. No. 07-0446, at 70.

The terms and conditions of common carrier traffic for movements of interstate petroleum shipments are governed by the Federal Energy Regulatory Commission (“FERC”). FERC approved Enbridge’s common carrier tariff structure for oil shipments using the SAX pipeline under the very circumstances (*e.g.*, long-term commitments to ship) that the Turner Intervenors claim shows that it is not such a carrier. FERC by law has exclusive jurisdiction

over the rates to be charged by an interstate common carrier by pipeline under tariffs for shipments of oil. In FERC's "Order On Petition For Declaratory Order," Docket No. OR13-19-000, issued July 31, 2013, it was noted that IEPC told FERC that "the Project currently is sized as a 24-inch pipeline that will provide up to 300,000 barrels per day (BPD) of capacity for crude oil transportation;" that "up to 90 percent of the capacity will be available for committed volumes, while at least 10 percent will be reserved for uncommitted volumes;" that "the Project will require a large capital investment; therefore the success of the Project depends on the support of committed shippers that make long-term ship-or-pay commitments at premium rates;" that "the Commission has recognized the importance of committed shippers to the pipeline's capital financing;" and that while "the Commission has not established a minimum percentage of capacity that must be set aside for uncommitted shippers . . . the Commission has indicated that a reservation of 10 percent of capacity for uncommitted shippers is sufficient to provide reasonable access." Order, Dkt. No. OR 13-19-000, at 1, 3, 5 (July 31, 2013). FERC accepted these representations and granted the petition of IEPC, thereby approving tariffs establishing such terms.

The Turner Intervenors argue that that the level of commitment by Marathon and one other shipper to use about two-thirds of the 300,000 bpd capacity of the SAX pipeline (*see, e.g.*, Tr. 1344-45), a volume well below the 90-percent level approved by FERC, somehow transforms the service provided into "contract service" and affects the pipeline's status as a common carrier. That argument is an impermissible collateral attack on FERC's approval of a common carrier tariff structure for IEPC. In addition, it ignores the testimony of Staff witness Maple that in his opinion SAX is not a private line because "there is already a second shipper on the line"; "there is other capacity that has not been subscribed"; and "I believe the FERC Order that's out there

said that for FERC to consider them as a common carrier, they only needed to hold out 10 percent of the capacity to have that distinction . . . [a]nd they seem to be holding out more than 10 percent of their capacity for other shippers.” TR. 1313-14, 1316-17.

Notwithstanding that the fundamental problem with the Turner Intervenors’ private line theory is it has no legal or factual support, Turner Intervenors have had access to more than sufficient information about Lincoln Pipeline LLC and Marathon Petroleum company’s shipping commitment on SAX to try to develop their specious private line theory. IEPC objected to the Turner Intervenors’ request for such information as irrelevant, but nonetheless provided substantial information about the investment by Lincoln Pipeline LLC in IEPC and about Marathon’s shipping commitment on SAX. For example, in a verified response to Turner Intervenors’ Data Request 1, IEPC pointed out that Lincoln Pipeline took on a minority equity interest of 35% in IEPC effective July 1, 2014, as shown in the 10Q filed by Enbridge Partners on August 1, 2014. Moreover, in its verified response, IEPC also stated that “Lincoln Pipeline LLC will not participate in the construction, operation, or maintenance of SAX.” Turner Intervenors’ Motion to Compel, Dkt. No. 07-0446, at 6 (Aug. 28, 2014). Regarding Marathon, the Turner Intervenors ignore that in response to Pliura Intervenors’ Data Request No. 12, IEPC provided information showing that there are presently two committed shippers for SAX, one of which is Marathon, and that together their commitment was for 210,000 bpd out of the 300,000 bpd capacity. Pliura Intervenors’ Motion to Compel, Exhibit B, Dkt. No. 07-0446, at 19 (Aug. 26, 2014). Each of these responses is verified, and each response is in the record because they were among the responses attached to the motions to compel filed by the Turner Intervenors and the Pliura Intervenors, respectively. Pliura Intervenors’ Motion to Compel, Dkt. No. 07-0446 (Aug. 26, 2014); Turner Intervenors’ Motion to Compel, Dkt. No. 07-0446 (Aug. 28, 2014).

This information is also in evidence. Tr. 1344-45. In addition, in attacking the ALJ, the Turner Intervenors ignore that the ALJ further required IEPC, pursuant to a confidentiality agreement, to reveal to the Turner and Pliura Intervenors the exact amount of the 210,000 bpd committed capacity for SAX that is committed to Marathon. ALJ Ruling, Dkt. No. 07-0446, at 3 (Sept. 3, 2014). IEPC provided such information under the confidentiality agreement as ordered. Finally, the ALJ, in ruling on their requests for information on these topics, expressly stated that much of the information was publicly available in IEPC's Form 10Q filing, the FERC order, and "elsewhere in filings in the current case." *Id.*

Lending a final air of vacuousness to the Turner Intervenors' private-line theory is that the SAX line is not yet built and operating. As shown, there is nothing in the currently known facts regarding committed shippers that would preclude SAX from operating as a common carrier when built. The Turner Intervenors would have the Commission speculate that once built, IEPC will operate SAX in a fashion that violates its FERC tariffs, its certificate from this Commission as a common carrier, Illinois law on common carrier obligations, and Enbridge's long history of operating common carrier pipelines. There is no warrant or justification for such speculation and it provides no basis for the relief sought.

The most outrageous of the Turner Intervenors' assertions are that Commission Staff, the ALJ, and even the Commission itself have been involved or complicit in so-called "backroom deals" that allegedly made possible everything from: (1) the exclusion of landowner Ann Sanner from intervening in Docket No. 13-0446 (Motion To Dismiss, at 4-5); (2) the Staff's failure, upon learning about Enbridge's decision in April 2014 to install a 24-inch pipe, to fulfill its alleged duty to bring the proceedings in Docket No. 13-0446 to an immediate halt and file a Motion To Dismiss based on either or both the alleged failure of Enbridge to disclose its new

plans or the purported failure to request eminent domain authority based on well-grounded fact and law” (Motion To Dismiss, at 5); (3) adoption of a too-narrow scope for the reopened Docket No. 07-0446 proceeding (Motion To Dismiss, at 7); and (4) the alleged ability of IEPC to “pick and choose what it desires to answer either in discovery or at a hearing, with impunity, because it had guaranteed the outcome with a backroom deal” (Motion to Dismiss, at 7).

IEPC has already responded (*supra* at 5-7) to the Turner Intervenors assertion -- (2) above -- about halting the eminent domain case and will not repeat that response here. The Turner Intervenors’ complaint (1) above, about the denial of the attempted intervention of Ann Sanner (Motion to Dismiss) in Docket No. 13-0446, is hard to understand. The ALJ properly ruled that she lacked standing to intervene in that case because her property was not on the list of properties for which eminent domain authority was sought. Accordingly, she had no standing to intervene under the Commission’s rules. As the ALJ ruled:

The scope of a proceeding under Section 8-509 is more narrow, as reflected in Section 8-509, prior Section 8-509 proceedings and Orders, and the Order in Docket No. 07-0446. Those landowners -- such as Ms. Sanner -- who are not listed in Attachment A to the Enbridge Petition are not subject to the Enbridge Petition. The Enbridge Petition does not seek any relief from the Commission in this proceeding with respect to them or their parcels. The assertions by Ms. Sanner in her filings, including those pertaining to whether Enbridge Illinois should be permitted to rely on unexercised “ancient easement rights” that may be the subject of a proceeding in federal court, do not support a conclusion that the issues discussed therein fall within the scope of this Section 8-509 proceeding.

Notice of Administration Law Judge’s Scheduling Ruling, Docket No. 13-0445, at 2 (December 2, 2013). The ALJ’s ruling is plainly correct, and was not appealed to the Commission.

The Turner Intervenors assert that “[t]he alleged narrow scope of Reopened 07-0446 is another product of backroom dealmaking” (Motion To Dismiss, at 7), but again no support is

provided for this assertion. In its Motion To Reopen And Amend and its Reply On Motion To Reopen And Amend, IEPC presented reasons why, under Commission precedent, a new, full-scale certification proceeding was not warranted for a change only in the diameter of the pipe from the 36-inches to 24-inches. That view was confirmed by Staff witness Mark Maple. Tr. 1310-11, 1321-22, 1343.

Finally, the Turner Intervenors make a number of assertions centered on their dissatisfaction with the answers to their discovery requests, claiming that IEPC is able to give allegedly inadequate responses because of some “backroom deal.” For example, the Turner Intervenors assert that “Enbridge can pick and choose what it desires to answer either in discovery or at a hearing, with impunity, because it had guaranteed the outcome with a backroom deal” (Motion To Dismiss, at 7), and that “[w]ith the ALJ being unwilling to permit thorough Intervenor investigations with the Marathon scenario, most likely due to an indifference of the ICC Staff, the Intervenors (sic) have been unable to develop all of the facts surrounding the new ‘private purpose’ of the SAX” (Motion To Dismiss, at 6), and “Enbridge repeatedly failed to disclose material relevant and case deciding facts” (Motion to Dismiss, at 8). Those assertions are incorrect.

Complaints about discovery responses from IEPC have become a staple in the Turner Intervenors’ litany of woes. A good example is their August 27, 2014 filing in this proceeding, wherein the Turner Intervenors argued (1) “[s]ince 2007, the Turner Intervenors of 07-0446 have been involved in four separate U.S. District court cases, 42 separate condemnation cases, and 4 ICC cases [If the Reopened 07-0446 is recognized for what it is, a new case.], where there have been well over a hundred separate discovery requests;” (2) “[c]omplete Enbridge responses can be counted on one hand.” Turner Intervenors’ Motion To Compel, To Vacate The Filing

Deadline For Testimony, To Continue The Scheduled Hearing, And To Suspend The Proceeding Until Enbridge Cooperates In Good Faith, at 5 (August 27, 2014). But that complaint demonstrates just the opposite of what the Turner Intervenors intend. Either you believe, as the Turner Intervenors suggest, that the Turner Intervenors' discovery failures reflect that a host of Illinois circuit court judges, four U.S. district court judges, and several ALJs at the ICC are all part of a giant backroom conspiracy to deny proper discovery to the Turner Intervenors or that, as is clearly the case, the Turner Intervenors' *modus operandi* in all such proceedings is to seek irrelevant information and to conduct fishing expeditions that are abusive of the discovery process.⁴

CONCLUSION

For all the foregoing reasons, the Turner Intervenors' Motion To Dismiss should be denied.

⁴ On September 24, 2014, the Pliura Intervenors filed "Pliura Intervenors' Response To Turner Intervenors' September 15, 2014 Motion To Dismiss." The filing is not a "Response" at all; rather, it is akin to "friendly" or "follow-up" cross, which is not allowed. Tr. 1243-44. It is hardly a "Response" to the Turner Intervenors' Motion To Dismiss when the Pliura Intervenors urge that "the proceedings should commence to dismiss this case, revoke the certificate in good standing issued in 07-0446, and moot the granting of eminent domain authority." Response, at 3. Indeed, that the so-called Response is simply a device to join in the Turner Motion To Dismiss is made clear in the very next sentence, where the Pliura Intervenors state, "to the extent that Turner's Motion To Dismiss seeks a similar remedy, Pliura Intervenors join in the Motion . . ." *Id.* The Pliura Intervenors could have filed their own motion to dismiss making their arguments but they chose not to. They should now suffer the consequence, which is the striking of their Response from the record.

Respectfully submitted,

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.

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One of Its Attorneys

Dated: September 26, 2014

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ENBRIDGE PIPELINES (Illinois) L.L.C.	:	
	:	
Application pursuant to sections 8-503, 8-509 and	:	Docket No. 07-0446
15-401 of the Public Utilities Act / the Common	:	
Carrier by Pipeline Law to Construct and Operate a	:	(Reopen)
Petroleum Pipeline and when necessary, to Take	:	
Private Property as Provided by the Law of	:	
Eminent Domain.	:	

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, RESPONSE OF ENBRIDGE PIPELINES (ILLINOIS) L.L.C. TO MOTION TO DISMISS AND IN THE ALTERNATIVE FOR OTHER RELIEF, in the above-captioned matter.

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.

By: /s/ G. Darryl Reed
One of Its Attorneys

Dated: September 26, 2014

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CERTIFICATE OF SERVICE

I, G. Darryl Reed, an attorney, certify that I caused copies of RESPONSE OF ENBRIDGE PIPELINES (ILLINOIS) L.L.C. TO MOTION TO DISMISS AND IN THE ALTERNATIVE FOR OTHER RELIEF, to be served on each of the parties listed on the service list via electronic or regular mail, this 26th day of September, 2014.

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