



## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>IMPACT OF ROUTE DEVIATION NEAR MACON COUNTY CONSERVATION DISTRICT.....</b>	<b>2</b>
<b>III.</b>	<b>STATUTORY AUTHORITY AND STANDARD OF REVIEW.....</b>	<b>9</b>
	A. CONTACT WITH LANDOWNERS .....	10
	B. EXPLANATION OF COMPENSATION OFFER.....	10
	C. REASONABLENESS OF COMPENSATION OFFERS .....	11
	D. RESPONSIVENESS TO LANDOWNER CONCERNS .....	11
	E. USEFULNESS OF FURTHER NEGOTIATIONS.....	11
<b>IV.</b>	<b>CONCLUSION.....</b>	<b>12</b>



*generally* Petition; Staff Ex. 1.0, 2.) As the underlying Certificate of Public Convenience and Necessity (“CPCN”) was issued pursuant to Section 8-406.1 of the Act, the Commission is required to rule on ATXI’s Section 8-509 request within 45 days of filing its Petition. (220 ILCS 5/8-509)

The Petitions to Intervene of Terry Traster was granted in this matter.

The following witnesses submitted direct testimony in this proceeding: For ATXI, Rick D. Trelz (ATXI Ex. 1.0), Amanda Sloan (ATXI Ex. 2.0), and Jerry A. Murbarger (ATXI Ex. 3.0); for Staff, Greg Rockrohr (Staff Ex. 1.0); and Terry Traster (Traster Ex. 1.00). The following ATXI witnesses submitted rebuttal testimony in this proceeding: Rick D. Trelz (ATXI Ex. 4.0), Amanda Sloan (ATXI Ex. 5.0) and Jerry A. Murbarger (ATXI Ex. 6.0).

An evidentiary hearing was held in this matter on October 3, 2014. Pursuant to the schedule set by the ALJ this IB follows.

## **II. IMPACT OF ROUTE DEVIATION NEAR MACON COUNTY CONSERVATION DISTRICT**

As in Docket No. 14-0522, in rebuttal testimony in this proceeding ATXI acknowledged that it intends to deviate from the route of the Pana to Mt. Zion segment approved by the Commission in Docket No. 12-0598 (ATXI Ex. 4.0, 4-5). Specifically, the Company intends to use a route heading east from U.S. Route 51 in Macon County that is approximately 0.5 miles south of the route approved in Docket No. 12-0598. (Staff Ex. 1.0, 10-15, Attachment C.) ATXI explained that a deviation was necessary because ATXI determined that it cannot exercise condemnation authority to obtain an easement across land on the Commission-approved route, as that route is owned by the Macon County

Conservation District (“MCCD”).<sup>1</sup> (Id.) ATXI stated that it is actively seeking to acquire voluntary easements from other landowners so that it can construct its transmission line along an alternative route that would turn east from U.S. Route 51 south of a parcel that MCCD owns rather than north of that MCCD parcel. (ATXI Ex. 4.0, 6-.)

Staff witness Greg Rockrohr observed that there were two logical actions the Commission could take in this proceeding that would address ATXI’s alternative route: (1) if it has not already done so, grant ATXI’s request for eminent domain and simultaneously amend the CPCN and Section 8-503 order previously granted to ATXI in Docket No. 12-0598 to include ATXI’s alternative route that bypasses the MCCP parcels; or (2) withhold eminent domain authority for all parcels along the Pana to Mt. Zion segment until ATXI amends the existing CPCN and obtains an order pursuant to Section 8-503 of the Act to reflect an alternative route that bypasses the MCCD parcels. (Staff Ex. 1.0, 15.)

ATXI’s planned deviation, and the Commission’s potential approval of that deviation in an eminent domain proceeding, raises several concerns. First, ATXI’s proposed alternate route was not approved by the Commission in Docket No. 12-0598. (Staff Ex. 1.0, 12-14). Several alternative routes for the Pana to Mt. Zion segment were considered in Docket No. 12-0598, including routes that entirely bypass the properties in Shelby and Macon County that are listed in ATXI’s petition as well as ATXI’s alternative route. (Id.) It is entirely possible that, after a full and complete evaluation of all of these routes as well as ATXI’s alternative route, the Commission could approve an entirely different route that does not involve any of the Shelby and Macon County properties. (Id.) Under those

---

<sup>1</sup> Staff agrees that, under Section 12(b) of the Conservation District Act (70 ILCS 410/12b), which provides that “Property owned by a conservation district may not be subject to eminent domain or condemnation proceedings” ATXI would be unable to use condemnation to obtain an easement across MCCD land.

circumstances, ATXI would no longer require easements across the Shelby and Macon County properties involved in this proceeding and therefore would not need eminent domain authority for these Shelby and Macon County properties. (Id.)

In his rebuttal testimony, ATXI witness Rick Trelz stated that ATXI designed and proposed a “minor modification” that avoided MCCD property and that was “substantially the same as the modification ATXI seeks to construct now.” (ATXI Ex. 4.0, 4-5.) As Mr. Trelz concedes, however, the “minor modification” to which he refers was first proposed by ATXI in its Rehearing Brief on Exceptions, and thus was not subject to a full and complete evaluation in that proceeding. (Id.) Moreover, notwithstanding Mr. Trelz’s use of the description “substantially the same [route],” the proposed modification in the instant proceeding is, in fact, not the same as the one the Commission approved in Docket No. 12-0598.

Second, a 45-day eminent domain proceeding such as this or Docket No. 14-0522 does not allow for a full and complete evaluation of ATXI’s alternative route, or a comparison to any other alternative routes that avoid the MCCD parcels, such as would be required in a Section 8-406.1 proceeding. (220 ILCS 5/8-406.1(f)). ATXI makes the conclusory assertion that even with its modification the route remains the lowest-cost option. (ATXI Ex. 4.0, 8-9.) ATXI also attempts to cloud the issue by asserting that, “[t]o the extent that Mr. Rockrohr is suggesting reopening evaluation of a route for the entire [Pana to Mt. Zion] segment,” such suggestion would be inappropriate because: (1) ATXI’s modification does not change any key aspects of the Commission-approved route; (2) approval of a new route would restart the clock on all real estate activities, ultimately delaying construction and jeopardizing the in-service date for this segment;

and (3) the costs ATXI has spent to date on real estate activities for the Pana to Mt. Zion segment would be “stranded” and thus add to the cost of any new route. (ATXI Ex. 4.0, 10.)

Notwithstanding these assertions, there insufficient evidence available to determine whether there is a lower-cost alternative route to ATXI’s alternative that is available and should instead be used. (Staff Ex. 1.0, 12-14.) For example, ATXI concedes that is proposed deviation from the approved route would add two additional 90-degree angles to the transmission line as compared to the Commission approved route, necessitating the use of two additional dead-end structures that would, all else equal, add cost to the project.<sup>2</sup> (ATXI Ex. 6.0, 3; see also Staff Ex. 1.0, 10, Attachment C.) Moreover, ATXI’s cost estimates do not include any premium that ATXI may have to pay to obtain easements over the deviated route. (See ATXI Ex. 6.0, 3)(real estate costs are assumed to be the same).

Further, as even a cursory reading of Mr. Rockrohr’s testimony makes clear, he makes no suggestion that the entire Pana to Mt. Zion segment should be reevaluated, or that a particular route is superior to another, or that ATXI’s alternative should be rejected. (Staff Ex. 1.0, 13-14.) Rather, he simply observes that the Commission has not approved ATXI’s alternative route and that other parties, Staff, and the Commission have not had the opportunity to compare ATXI’s alternative route to other alternative routes. (Id.) ATXI does not, because it cannot, dispute this point, regardless of its attempts to cloud the issue. As such, only if the Commission is certain that ATXI should use the alternative route it is pursuing, should it grant ATXI eminent domain authority and an amended CPCN

---

<sup>2</sup> In Docket 12-0598, ATXI provided the following cost estimates for structure types: (1) tangent structure, \$33,000; (2) running angle structure, \$74,250; (3) dead-end structure, \$107,250. (Docket No. 12-0598, Staff Ex. 1.0, 20-21.)

and order pursuant to Section 8-503 of the Act approving ATXI's alternative route. (Staff Ex. 1.0, 14-15.) Otherwise, the Commission should withhold a grant of eminent domain authority to ATXI for all parcels along the Pana to Mt. Zion segment until such time as it amends the existing CPCN and order pursuant to Section 8-503 of the Act to reflect an alternative route that bypasses the MCCD parcels. (Id.)

Third, ATXI's alternate route appears to be inconsistent with the Commission's Second Order on Rehearing in Docket No. 12-0598. As noted above, ATXI's alternative route was never considered or approved by the Commission. (Staff Ex. 1.0, 10-12.) The issue with acquiring easements across MCCD land, however, was addressed by the Commission. (Id.) In its Second Order on Rehearing in Docket No. 12-0598, the Commission stated:

ATXI should therefore utilize the Assumption/Corzine Route from Pana until it reaches Staff's Kincaid route, at which point ATXI should follow the Staff's Kincaid route east to the substation Option #2 site. Admittedly, this route does not avoid the MCCD property, which is just east of Highway 51. But the Commission trusts that ATXI will work to address this obstacle. If need be, the Commission will entertain requests for a revised route under Section 8-406 to avoid the MCCD land.

*Ameren Transmission Co. of Illinois*, ICC Second Order on Rehearing Docket No. 12-0598, 50-51 (Feb. 20, 2014) (emphasis added). As the emphasized language above indicates, it appears that the Commission contemplated that, should ATXI experience issues obtaining easements across MCCD property as it now indicates it has, it was to request approval of a revised route in a Section 8-406 proceeding, rather than in a Section 8-509 docket.<sup>3</sup>

---

<sup>3</sup> Approximately 90 minutes prior to the filing of this Initial Brief, the Commission entered its Order in Docket No. 14-0522, in which the same issue was presented. While Staff has yet to be served with or review this Order, it appears from the discussion of the Chairman and Commissioners that the Commission did indeed expect ATXI to do precisely this. More specifically, Staff is informed and believes

Finally, it should be noted that granting ATXI an amended CPCN and order pursuant to Section 8-503 of the Act approving ATXI's alternative route in this proceeding would appear to be inconsistent with Section 200.150 of the Rules of Practice of the Commission. 83 Ill. Adm. 200.150. Section 200.150(h) provides, in pertinent part, that:

A person filing an application under Section 8-406 of the Public Utilities Act for a Certificate of Public Convenience and Necessity to construct facilities upon or across privately owned tracts of land, or filing under Section 8-503 of that Act [220 ILCS 5/8-503], shall include with the application when filed with the Commission a list containing the name and address of each owner of record of the land as disclosed by the records of the tax collector of the county in which the land is located, as of not more than 30 days prior to the filing of the application. The Commission shall notify the owners of record of the time and place scheduled for the initial hearing upon the application.

83 Ill. Adm. 200.150. Moreover, the Commission has emphasized its responsibility, particularly in Section 8-406.1 proceedings, to ensure that all affected parties are afforded the opportunity to be heard and that affected landowners receive timely notice of proposed transmission routes, including all proposed alternative routes. See *Commonwealth Edison Co.*, ICC Order on Motion to File Amended Petition Docket No. 13-0657, 2 (July 9, 2014); *Illinois Power Co.*, Correspondence, ICC Docket No. 06-0179 (July 25, 2006).

In Docket No. 14-0522, ATXI explained its plans to use an alternate route from the route approved by the Commission in Docket No. 12-0598. As already noted, ATXI's alternate route was not considered in Docket No. 12-0598. As such, landowners affected by ATXI's proposed alternate route were not notified in the Section 8-406/8-503 proceeding in which the CPCN for ATXI's route was approved. Thus, logically, simultaneously granting ATXI an amended CPCN and order pursuant to Section 8-503 of

---

that the Commission denied ATXI eminent domain authority with respect to any properties along the Pana – Mt. Zion route segment until such time as ATXI receives approval of a modified route pursuant to Section 8-406. Staff will submit the Order in Docket No. 14-0522 as supplemental authority at such time as it receives it.

the Act approving ATXI's alternative route in this proceeding would be no different than if ATXI's alternative route had been approved, without notice to affected landowners and without a full and complete evaluation of that route, in Docket No. 12-0598.

There are two logical actions the Commission could take in this proceeding that would address ATXI's alternative route for the Pana to Mt. Zion segment: (1) withhold eminent domain authority for all parcels along the Pana to Mt. Zion segment until the existing CPCN is amended and ATXI obtains an order pursuant to Section 8-503 of the Act to reflect an alternative route that bypasses the MCCD parcels, or (2) grant ATXI's request for eminent domain and simultaneously amend the CPCN and Section 8-503 order previously granted to ATXI in Docket No. 12-0598 to include ATXI's alternative route that bypasses the MCCP parcels. Of these two choices, Staff recommends the first because, as described above, (a) it is consistent with the provisions of Section 8-406.1 of the Act, (b) would allow for a full and complete evaluation of ATXI's alternative route, (c) it is consistent with the Commission's Second Order on Rehearing in Docket No. 12-0598, and (d) it is consistent with the Rules of Practice of the Commission and prior Commission decisions.<sup>4</sup> In contrast, the second action, while solving ATXI's routing problem, would not allow for a full and complete evaluation of ATXI's alternative route, and would appear to be inconsistent with Section 8-406.1, the Rules of Practice of the Commission and prior Commission decisions. Therefore, the Commission should only take the second action if it is certain that ATXI should use the alternative route it is pursuing.

---

<sup>4</sup> As observed in note 3 above, the Staff's recommendation also appears to be consistent with the Commission's Order in Docket No. 14-0522, with the caveat that Staff bases this assertion upon the discussion among the Chairman and Commissioners regarding the matter, and is not yet in possession of a copy of the Order.

Staff testified about only two possible Commission actions that it considers to be logical. ATXI notes two additional options for the Commission other than the two options that Staff presented. (Staff Ex. 1.0, 15.0) First, ATXI points out that the Commission could find that ATXI's route deviation is consistent with the Commission's Second Order on Rehearing. (ATXI Ex. 4.0, 15) Based upon a plain reading of the Commission's Second Order on Rehearing, Staff does not understand this option to be logical or reasonable. Staff Ex. 1.0, 11) Second, the Commission could grant ATXI's request for eminent domain authority but still require ATXI to seek approval for its route deviation, as suggested by the Proposed Order in Docket No. 14-0522. (ATXI Ex. 4.0, 15). Staff respectfully submits that it does not consider this action to be logical either, as such action presumes use of ATXI's route deviation to bypass the MCCD parcels. If the Commission is certain that ATXI's route deviation should be used, then Staff believes it would be far more efficient course of action to simply amend the CPCN and Order pursuant to Section 8-503 in the eminent domain proceeding without requiring a separate proceeding, the outcome of which is already predetermined.

### **III. STATUTORY AUTHORITY AND STANDARD OF REVIEW**

Section 8-509 of the Act provides, in pertinent part, that:

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.

220 ILCS 5/8-509. ATXI's Illinois Rivers Project was authorized pursuant to Sections 8-406.1 and 8-503 of the Act in Docket No. 12-0598. (Staff Ex. 1.0, 4; *Ameren*

*Transmission Co. of Illinois*, ICC Second Order on Rehearing Docket No. 12-0598, 83 (Feb. 20, 2014).

The Commission has articulated five criteria it uses to determine whether a grant of eminent domain authority is warranted: (1) the number and extent of contacts with landowners; (2) whether the utility has explained its offer of compensation; (3) whether the offers of compensation are comparable to offers made to similarly situated landowners; (4) whether the utility has made an effort to address landowner concerns; and (5) whether further negotiations will likely prove fruitful. (*Ameren Transmission Co. of Illinois*, ICC Order Docket No. 14-0291, 4 (May 20, 2014); (Staff Ex. 1.0, 3).

#### **A. CONTACT WITH LANDOWNERS**

ATXI provided adequate information regarding the number and extent of contacts with landowners. (Staff Ex. 1.0, 6.) ATXI witness Rick Trelz explained that ATXI or its representative, Contract Land Staff, have contacted each landowner no fewer than 13 times. (ATXI Ex. 1.0, 7-8; ATXI Ex. 2.1.) ATXI provided documentation of ATXI's contacts with each of the affected landowners, and the date and time of each successful and unsuccessful attempt to contact the landowners. (ATXI Ex. 2.3; Staff Ex. 1.0, 6-7.)

#### **B. EXPLANATION OF COMPENSATION OFFER**

ATXI adequately explained the basis for its offers of compensation. (Staff Ex. 1.0, 7.) ATXI witness Rick Trelz explained that ATXI's property evaluations and financial offers to landowners are based on a third-party appraiser's determination of the market value of each property. (ATXI Ex. 1.0, 7; Staff Ex. 1.0, 7-8.) ATXI's initial offers

are approximately 90% of a property's fee value, with an additional early signing bonus that potentially increases the offer to full fee value. ATXI's offers included payment for crop damage resulting from installation of the transmission line. (ATXI Ex. 1.0, 11, 15; Staff Ex. 1.0, 7.) ATXI provided a worksheet and copy of the property appraisal used to determine its offer to each landowner to further explain its compensation offer to each landowner. (ATXI Ex. 1.0, 7; Staff Ex. 1.0, 7.)

### **C. REASONABLENESS OF COMPENSATION OFFERS**

ATXI's offers of compensation to individual landowners were comparable to offers made to similarly situated landowners. (Staff Ex. 1.0, 7.) In determining the compensation offers, ATXI used American Appraisal Associates, Inc., the same third-party appraiser it used for properties covered in Docket Nos. 14-0438 and 14-0522. (ATXI Ex. 1.0, 11.) ATXI's appraisers used sales of similarly situated properties when evaluating each property to help determine the compensation amounts ATXI would offer to landowners. (ATXI Ex. 1.4, 8; Staff Ex. 1.0, 7-8.)

### **D. RESPONSIVENESS TO LANDOWNER CONCERNS**

ATXI has made an effort to address landowner concerns. (Staff Ex. 1.0, 8.) ATXI provided examples of changes in the dollar amount of its offer after receiving information from landowners. (Staff Ex. 1.0, 8.) When disagreements regarding ATXI's valuation occurred, ATXI invited landowners to present their own appraisal for ATXI to consider during negotiations. (ATXI Ex. 1.0, 14.)

### **E. USEFULNESS OF FURTHER NEGOTIATIONS**

#### **IV. CONCLUSION**

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with this Initial Brief.

Respectfully submitted,

MATTHEW L. HARVEY  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877

*Counsel for the Staff of the Illinois  
Commerce Commission*

October 7, 2014