

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH  
COMPANY

EDISON

Application 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 Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**INITIAL BRIEF ON REHEARING**

Michael Petersdorf, Sarah Petersdorf,  
and Ellen Roberts Vogel,

By their attorneys,

William M. Shay  
Jonathan LA Phillips  
Shay Phillips, Ltd.  
456 Fulton St., Suite 255  
Peoria, IL 61602  
[wshay@skplawyers.com](mailto:wshay@skplawyers.com)  
[jphillips@skplawyers.com](mailto:jphillips@skplawyers.com)  
309.494.6155

March 3, 2015

## Table of Contents

<b>I.</b>	<b>Introduction.....</b>	<b>1</b>
<b>II.</b>	<b>As a threshold issue, no rehearing should have taken place .....</b>	<b>1</b>
<b>III.</b>	<b>Restrictions/Dispute.....</b>	<b>4</b>
<b>IV.</b>	<b>Rehearing routing alternatives are inferior to the Approve Route.....</b>	<b>7</b>
<b>A.</b>	<b>Neither ComEd nor Cash/Fitzgerald have adequately investigated routing alternatives.....</b>	<b>8</b>
<b>B.</b>	<b>Description of Routing Alternatives .....</b>	<b>9</b>
1.	Approved Route .....	10
2.	FPDKC Adjustment.....	11
3.	ComEd Conditional Rehearing Alternative.....	13
4.	Cash's alteration to ComEd Conditional Rehearing Alternative .....	14
<b>V.</b>	<b>Conclusion.....</b>	<b>15</b>

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH COMPANY	EDISON	Application 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 Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois
-------------------------	--------	--

Docket 13-0657  
On Rehearing

<b>INITIAL BRIEF ON REHEARING</b>
-----------------------------------

Michael Petersdorf, Sarah Petersdorf, and Ellen Roberts Vogel (together, the “SP Parties”), file their Initial Brief on Rehearing in the above-referenced proceeding.

**I. Introduction**

As this brief will amply show, several reasons exist that should cause the Illinois Commerce Commission (“Commission”) to reject the proposed routing adjustments in the area of the Muirhead Springs Forest Preserve and Plato Center, and reaffirm the route approved in its October 22, 2014, Order.

**II. As a threshold issue, no rehearing should have taken place**

The beginning of this brief can serve as the end; it is unnecessary to reach the merits of any routing alternative. As a threshold matter, Mr. Cash’s, and his group’s, refusal to participate in the original proceedings and, further, their refusal in their Motion for Rehearing to explain why ends the inquiry. Instead of providing this Commission with purported facts they knew or had well before

direct testimony was due in the original phase of this proceeding, they chose to fight their battle by proxy. They lost. They then moved for rehearing, but failed to explain why they could not have made their case the first time around.<sup>1</sup> This is likely because evidence developed in this rehearing shows there was no good reason for not doing so.

The Commission already knows that the Forest Preserve District of Kane County (“FPDKC” or “Forest Preserve” or “Forest Preserve District”) advocated a route through Muirhead Springs Forest Preserve during the original proceedings in this docket. Order, p. 28 (Oct. 22, 2014). The Commission considered the Forest Preserve’s routing and rejected it. *Id.*, p. 34-35. What the Commission was unaware of, apparently, is the fact that Cash and his group had the entirety of their argument prepared before direct testimony was due. Tr. at 134:22-135:15. Indeed, they had the information before the Forest Preserve flip-flopped – first opposing use of its land, then offering it up. *Id.*

During the entirety of the original hearing in this docket, Mr. Cash<sup>2</sup> and his group sat on their hands and lobbied the Forest Preserve to do their work for them. Tr. at 120:1-4. (Q: “Is it fair to say then your efforts consisted of lobbying the Forest Preserve District to then advocate the adjustment here at the ICC?” A: “Yes.”). Indeed, Mr. Cash – and his non-expert, non-testifying, supplier of data,

---

<sup>1</sup> Vogel and the Petersdorfs adopt, and reassert, and expressly do not waive arguments in the Motion for Leave to File Statement of Opposition for Rehearing and/or to Correct Record Regarding FPDKC Adjustment, instant and its attached Statement of Opposition (Nov. 24, 2014), as well as Motion of Ellen Roberts Vogel to Reconsider and Reverse Grant of Rehearing to Muirhead Group (Dec. 12, 2014).

<sup>2</sup> Mr. Cash is not a Muirhead, but has taken the banner of the Muirhead name despite the fact that the members of that branch of the Muirheads filed absolutely no testimony and failed to answer a single data request issued to them. Tr. at 113:19- 120:2, 115:9-10.

Mr. Fitzgerald<sup>3</sup> – had developed almost the entirety of the group’s argument and data in January 2014. Tr. at 123:11-20. He allowed the opportunity to file direct testimony pass – despite the Forest Preserve’s filing with this Commission that it opposed routing through Muirhead Springs at that time. See, Meyers Dir. (original), Meyers Ex. 1.0, ll. 14-18 (Apr. 15, 2015); Tr. at 134:22-135:15 (admitting that Cash was lobbying the Forest Preserve District and that the Commission was unaware of any change in the Forest Preserve’s position until April, 2014). Mr. Cash lost his proxy battle. Order, p. 34-35. Yet, he and his group came to the Commission and moved it for rehearing. Motion for Reh’g and/or to Correct Record Regarding FPDKC Adjustment (Nov. 20, 2014).

Mr. Cash’s, and his group’s, Motion for Rehearing came with a great number of misleading factual allegations.<sup>4</sup> It appears that, despite being verified, no one actually bothered to check the veracity of the statements in that Motion, given the nature of the discovery disputes stemming from Cash and his group. See, e.g. Reply Memo. In Support of Motion to Compel and/or Bar Evidence, ¶¶ 2, 3, 4 (Jan. 30, 2015). Most importantly, Mr. Cash and his group did not undertake any effort to explain why these purported facts were not raised in the original proceeding. In hindsight, having wasted months of the Commission’s, ComEd’s, and other intervenors’ time and resources, we now know why. There was no excuse.

---

<sup>3</sup> Mr. Fitzgerald has never been employed by an electric utility or cooperative and never been responsible for siting or operating utility scale transmission facilities. Tr. at 123:21-124:5.

<sup>4</sup> For example, illustrations and demonstrative exhibits with towers wholly out of scale, necessarily prejudicing the viewer of such images. Tr. 131:4-5.

As a matter of law, Mr. Cash's, and his group's, Motion for Rehearing was deficient. Under the Commission's Rules of Practice, applications for rehearing "shall contain . . . an explanation why such evidence was not previously adduced." 83 Ill. Admin. Code §200.880(a) (emphasis added). Mr. Cash, and his group, did not do so. Further, insofar as these proceedings have resulted in increased cost, extended time, and resulted in parties who acted diligently and in good faith, e.g., Ellen Roberts Vogel, it is improper for this Commission to rely upon its discretion to allow such blatant disregard for the Rules of Practice. 83 Ill. Admin. Code § 200.25.

The simple fact is that Mr. Cash strategically waged a battle through his group's proxy, the Forest Preserve District of Kane County, and, when he lost that battle, sought to open another battlefield. This rehearing did not need to take place. Now that the evidence shows that the blatant violation of the Rules of Practice was not harmless, the Commission need not proceed further. The Approved Route should remain in place for this project.

### **III. Restrictions/Dispute**

The record as it has developed demonstrates that the ComEd Primary Route, the route approved in its October 22, 2014, Order, is the most appropriate based on the traditionally-applied routing factors, as those were applied in the pre-rehearing portion of this proceeding. An additional reason emerged and became a major focus of discovery and evidence during the rehearing portion of the proceeding to confirm that the Primary Route should be approved and ordered. The deeds by which Robert Muirhead (the Father of intervenor Sarah

Petersdorf) transferred much of the land which now comprises the Muirhead Springs Forest Preserve in 2003, including land over which either of the two alternative routing alternatives would cross, contained a significant, express restriction on the land's use. ComEd presented evidence that the inclusion in the original recorded deeds, and continued existence, of the restrictions<sup>5</sup> prevents ComEd from utilizing either of the two alternative routing adjustments.

In his Response Testimony, Michael Petersdorf aptly described the original deed restrictions and their continued effectiveness, as follows:

Although I am not an attorney, from the plain reading of the subject restrictions, I believe that (1) the restrictions do prohibit the FPDKC from allowing electric transmission lines on the subject parcels; (2) that the hand-drawn cross-outs of the restrictive language, which appear to have been done in mid-2014, were done with neither the knowledge nor consent of any of the persons or parties who deeded the parcels to the KCFPD; (3) the persons and parties that deeded those parcels received nothing in exchange for any purported elimination of the restrictions; and (4) the restrictions for all 3 deeds and parcels remain in effect.

Petersdorf Ex. 2.0 at 2:13-21.

Neither Mr. Petersdorf nor his wife, Sarah, had any knowledge of the purported striking of the restrictions prior to them becoming known during the rehearing process. *Id.* at 3:30-32. Sarah is a Manager and Member of the legal entity, Muirhead Hui, LLC, that transferred one of the parcels in question to the FPDKC in 2003. *Id.* at 3:32-34; Tr. at 146:18-22 – 147:1-6, 152:13-15 (Feb. 19, 2015). If they were approached about consenting to a release of the restrictions, they would refuse to do so. Petersdorf Response Testimony (Reh'g), Petersdorf Ex. 2.0 at 3-4:39-49; Tr. at 153:1-6, 19-22, 154:1-22, 155:1-4 (Feb. 19, 2015). Good reason existed at the time of the restrictions and for their continued existence

---

<sup>5</sup> [reference IDNR restrictions]

and effectiveness today. They were not arbitrary or unreasonable. Mr. Petersdorf testified that the property restrictions:

were an integral part of the property transfers, partly in order to protect our remaining acres and improvements, most importantly our Frank Lloyd Wright-designed Farm House. It seems inconsistent with the parcel transfers and the mission and purpose of the FPDKC, to now attempt to unwind part of the transfers in order to serve a different purpose that we do not understand.  
Petersdorf Ex. 2.0 at 3-4:44-49.

As further evidence of their position that the subject restrictions should not have been crossed out and the deeds re-recorded, during cross-examination of Mr. Petersdorf, counsel for ComEd elicited that counsel for the Petersdorfs recently sent a demand letter to counsel for the FPDKC concerning a release of the deed restrictions. Tr. at 155:5-22, 156:1-11.<sup>6</sup>

The record on rehearing amply demonstrates the absolute impediments the restrictions impose to routing a high voltage electric transmission line across land deeded to the FPDKC to which the restrictions attached and continue to apply. ComEd witnesses Mr. Naumann and Ms. Woods thoroughly explained why the restrictions, despite the attempted unilateral, unapproved striking through hand-drawn cross-outs and re-recording of deeds, prevent ComEd from utilizing the parcels in question for its transmission line. Naumann Supp. Direct (Reh'g), ComEd Ex. 37.0 at 1-2:18-24, 3-4:51-77; Woods Supp. Direct (Reh'g), ComEd Ex. 38.0 CORR; Naumann Reb. (Reh'g), ComEd Ex. 39.0 at 1-2:16-30. Exhibits introduced during cross-examination further reinforced the evidence as to the continued effectiveness of the restrictions and the FPDKC's futile attempts

---

<sup>6</sup> While an objection to the admission of the demand letter was sustained, no objection was made as to counsel for ComEd's questions of the witness regarding the letter.

to get the property grantors to release them. ComEd Group Cross Ex. 5 (data requests and responses describing, and providing copies of, communications between counsel to the FPDKC and counsel to the grantors). Indeed, if the FPDKC considered the restrictions to have been effectively and legally removed and rendered no longer effective, then we must question the necessity its efforts to get the property grantors to release the restrictions.

In summary, the record shows that the restrictions exist and as far as the record shows are valid, that attempts were made to get the transferors of the properties to consent to lifting the restrictions, and that such attempts were unsuccessful. Through his prepared testimony and oral testimony at hearing, Michael Petersdorf, Sarah's husband, stated and reaffirmed the transferors' recognition of the existence of the restrictions and refusal to consent to their removal. By seeking such consent, the FPDKC recognized the likelihood that the restrictions remain in effect, despite its attorney's unilateral crossing out of the restrictions and re-recording of the deeds in mid-2014.

#### **IV. Rehearing routing alternatives are inferior to the Approve Route**

Even assuming, *arguendo*, that the aforementioned restrictions on the Muirhead Springs Forest Preserve could be safely ignored, the Commission's twelve-factor test for comparing routes overwhelmingly favor the *status quo* in this area. See, *Ameren Illinois Transmission Co.*, Docket No. 12-0598, pp. 14-15 (Order, Aug. 20, 2013). Both the FPDKC Adjustment and ComEd's Conditional Rehearing Alternative are inferior to the Approved Route.

Indeed, the entirety of this rehearing has been an exercise in reviewing routes to avoid Mr. Cash and his group's properties. Mr. Cash purchased land for speculation on May 23, 2013. Tr. at 135:15-16, 116:10-117:2. The Approved Route runs across properties owned by Cash and members of his group. Cash Dir. on Reh'g, Exh. B. Demonstrating what ComEd during the pre-rehearing portion of this proceeding labelled parochial sentiments, Cash and his group simply want to burden others – including Sarah and Michael Petersdorf and Ellen Roberts Vogel. The Commission seemingly rejected arguments such as this argument in its Final Order. Order, p. 34 (“Many of the intervenors’ proposed adjustments to ComEd’s Primary or alternate routes shift the transmission line away from their properties.”).

A. Neither ComEd nor Cash/Fitzgerald have adequately investigated routing alternatives

There has been very little analysis done by Mr. Cash and his group for the FPDKC Adjustment. See, e.g. Tr. at 124:6-18 (indicating that Cash/Fitzgerald did not undertake independent studies of any routes on rehearing). Further, Cash extensively relied upon the “very good ideas” of an individual with no transmission line siting experience. Tr. at 122:9-11, 124:2-5. Further, when undertaking routing measurements, Cash/Fitzgerald measured from the middle of the railroad tracks, not where the lines actually would be. Tr. at 126:2-5. Cash/Fitzgerald did not undertake any engineering reviews. See, e.g., Tr. at 133:15-17. In short, Cash and Fitzgerald provide this Commission with little more than out-of-scale drawings laid over ComEd maps.

Likewise, ComEd has done little to support its Conditional Rehearing Alternative. Further, analysis ComEd has undertaken, beyond cost calculations, was based upon different criteria than Ms. Murphy – ComEd’s routing/siting expert – utilized in the original proceedings. *Compare*, Tr. at 278:12-279:9<sup>7</sup> to Murphy Dir. (Reh’g), ComEd Exh. 36.0, p. 5. ComEd did not even investigate impacts at 500 feet. SP Cross Exh. 7 (wherein data request responses to Vogel-ComEd 3.06, 3.07, and 3.08 indicate no 500 foot analysis was undertaken). By ignoring its previous standards, ComEd effectively presented an apples-to-oranges comparison.

Utilizing the twelve-factor test, in an apples-to-apples comparison, the Commission should conclude that Approved Route remains the superior route in the vicinity of the Muirhead Springs Forest Preserve and Plato Center.

B. Description of Routing Alternatives

---

<sup>7</sup> Mr. Dauphinais, as well as Staff Engineering witness Mr. Rashid, agreed with the use of 500 feet as a *de facto* standard. Tr. at 223:1-11; 177:5-10.

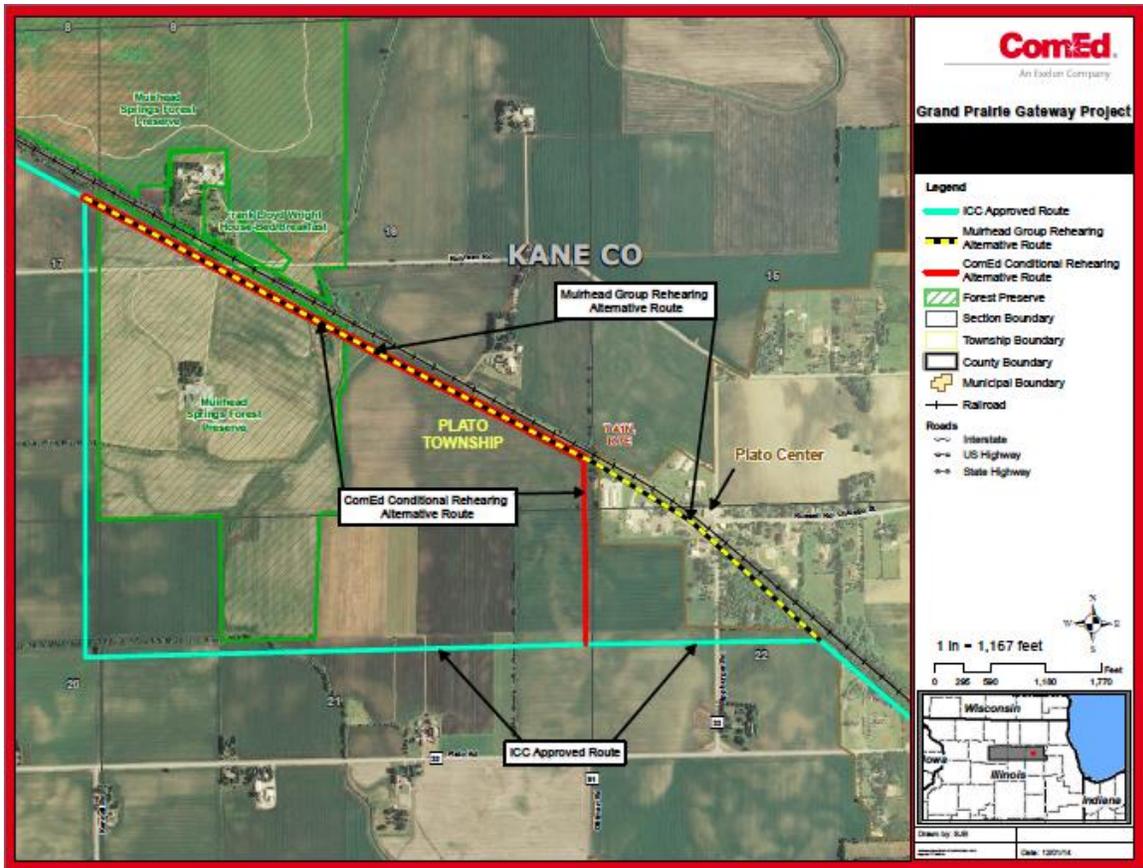


Figure 1 - Rehearing Routing Alternatives (ComEd Exh. 35.01)

1. *Approved Route*

The Approved Route in the vicinity of Muirhead Springs Forest Preserve is ComEd's Primary Route in the original proceedings in this docket. This route is well known to the Commission and is represented in the above image as a teal line. Notably, there are only two homes on any of the Cash group properties crossed by that teal line, and only one is occupied. Tr. at 118:10-12. Nothing in the record indicates that either of those homes is within 500 feet of the centerline of the Approved Route. In fact, only four residential structures are within 500 feet of the Approved Route in this area. Tr. at 130:8-10. Additionally, there are no

schools or baseball and softball fields within 500 feet of the Approved Route in this area. Tr. at 129:22-130:4.

## 2. *FPDKC Adjustment*

The yellow-and-black dashed line in the image above represents the FPDKC Adjustment. It has also been referred to as the Muirhead Group Alternative.<sup>8</sup> It carries along the south side of railroad tracks, through Muirhead Springs Forest Preserve, within 315 feet of a historic Frank Lloyd Wright farmhouse and within 500 feet of farm structures on the Vogel property. Petersdorf Dir. (Reh'g), Exh. 1.0, ll. 85-89; Vogel Dir. (Reh'g), Exh. 2.0, ll. 46-47. It then traverses directly through the village of Plato Center.

Even ignoring, for a moment, that Mr. Cash's and Mr. Fitzgerald's accounting of the Commission's factors wholly understated many impacts, it is evident the route he advocates is wholly inappropriate. As to impacts to non-residential structures, at least 18 non-residential structures are impacted in Plato Center alone Tr. at 128:12. Thus, *at least*<sup>9</sup> 19 non-residential structures are located within 500 feet of its centerline. See, Order, pp. 34-45 (rejecting a proposed route alternative that was shorter and cheaper based upon opposition and an increase in impact to only seven additional non-residential structures). Implicating what might be considered the most important non-residential structures, the FPDKC Adjustment has a school and several ball fields within 500 feet of its centerline. Tr. at 126:8-14.

---

<sup>8</sup> Insofar as this route has not been actively fought for by anyone in the Muirhead family, it is submitted that this label is a misnomer. Indeed, the only Muirhead family members to file testimony or answer data requests in these proceedings oppose this route.

<sup>9</sup> Not including sheds or garages. Tr. 128:1-5.

Additionally, the FPDKC Adjustment has *at least* fifteen homes within 500 feet of its centerline, even excluding the historic Frank Lloyd Wright home. Tr. at 126:15-17. Even if it saves some money,<sup>10</sup> this Commission has previously recognized that impacts to homes outweigh costs of construction. *In re Ill. Power Co. d/b/a Ameren IP & Ameren Ill. Transmission Co.* Order, p. 16, Docket 06-0179 (May 16, 2007) (“Although the Staff proposal is longer, and thus more costly, it provides, among other things, an important benefit of avoiding the siting of high-voltage transmission lines in close proximity to residential dwellings.”).

As to impact to historical resources, the record reflects that the Muirhead Farmhouse is a historically significant structure. See, e.g., Petersdorf Dir. (Reh’g), Ex. 1.0, p. 4 (representing the home to be a Kane County Landmark and a recipient of the Richard H. Driehaus Foundation Award for Rehabilitation). This factor disfavors the FPDKC Adjustment.

Finally, as to the community acceptance factor, out of the group he purports to represent only Mr. Cash has participated in these proceedings. The remainder of his group sat silently and refused to participate in discovery, doing nothing more than they did in the original proceedings. Tr. at 113:29-114:1. Their unreasonable lack of effort should not be rewarded. By contrast, Ellen Roberts Vogel made her opposition to the project bisecting her property apparent in the original proceedings. Vogel, Ex. 1.0 (Apr. 7, 2014). Additionally, Michael and Sarah Petersdorf have actively participated along with Ms. Vogel in the rehearing, opposing any changes from the Approved Route in the vicinity of the

---

<sup>10</sup> The extent of purported cost savings is not yet known. Any savings are necessarily mitigated by both amounts extracted by the Forest Preserve District as well as costs of litigation in any actions attempting to clear title.

Muirhead Springs Forest Preserve. Further, the Forest Preserve District of Kane County has received letters from organizations concerning allowing routing through the Muirhead Springs Forest Preserve. Tr. at 78:8-13.<sup>11</sup> The Community Acceptance factor disfavors the FPDKC Adjustment. This is not surprising given the fact that the Approved Route crosses fewer parcels than does the FPDKC Adjustment. Murphy, Dir. (Reh'g), ComEd Ex. 36.0, p. 5.

### 3. *ComEd Conditional Rehearing Alternative*

Like the FPDKC Adjustment, the ComEd Conditional Rehearing Alternative carries southeasterly along the south side of the railroad tracks, through Muirhead Springs Forest Preserve, near the Frank Lloyd Wright home and past the Vogel farm home and other structures. However, it turns due south to re-meet the Approved Route after traversing the Vogel property. It is represented by the red line in the above figure.

While it may not impact as many structures as the ill-conceived, once rejected, FPDKC Adjustment, it is indisputable that ComEd's Conditional Rehearing Alternative impacts a greater number of residential and non-residential structures than does the approved route. While Ms. Murphy's testimony on rehearing intimates no difference in these values, it errs. Her rehearing testimony relies upon a 110-foot distance from centerline. Murphy, Dir (Reh'g), ComEd Ex. 36.0, p. 5. In utilizing this distance, Ms. Murphy ignores the *de facto* 500-foot standard she utilized in the original proceedings. Tr. at 279:2-3; *see also*, Tr. at 224:1-5, Tr. at 177:1-10.

---

<sup>11</sup> While the letters themselves, and testimony concerning their contents, were struck from the record, no Motion was made as to the receipt of letters expressing concern.

Finally, the same historical impact and community acceptance issues exist for the ComEd Conditional Rehearing Alternative adjustment as for the FPDKC Adjustment.

4. *Cash's alteration to ComEd Conditional Rehearing Alternative*

Finally, in his Response testimony, John Cash raises an adjustment<sup>12</sup> to the ComEd Conditional Rehearing Alternative, for the first time. It consists of more turns on the Cash/Lewis property and is graphically represented in the Response Testimony of John F. Cash, Exhibit A. It is shown below.

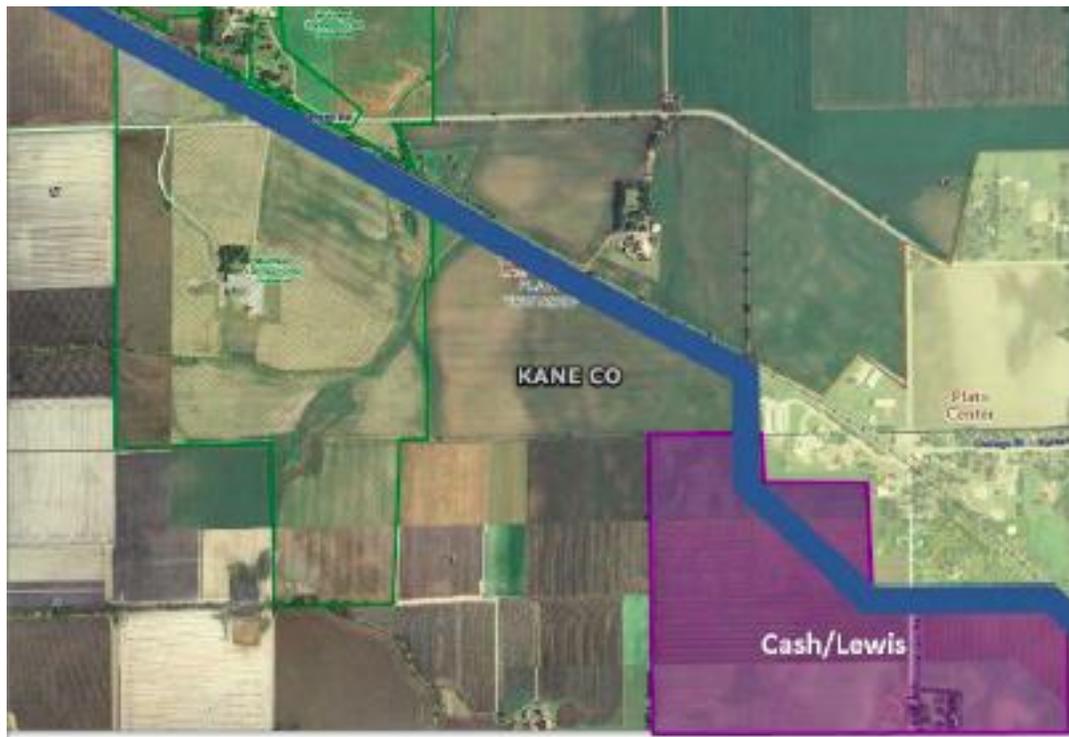


Figure 2 - Cash's Response Testimony Route - Cash, Dir. (Reh'g), Exh. A.

However, Mr. Cash only believes this route to be appropriate if the ComEd Conditional Rehearing Alternative is utilized. Tr. at 134:2-6. As that route is not

<sup>12</sup> Vogel and the Petersdorfs renew their objection to this late-filed routing alternative that they were not able to respond to in direct testimony.

acceptable to ComEd anymore, and is inferior to the Approved Route, there is no reason to consider this route further.

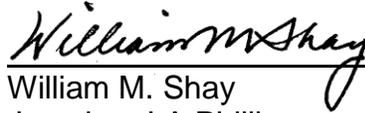
## V. Conclusion

As a threshold issue, it is inappropriate to consider the routing alternatives on rehearing. However, even if they are considered, the adjustments proposed on rehearing rely upon land that is unavailable to ComEd to construct the line. Further, all of these routing adjustments are inferior to the Approved Route when examined under the Commission's twelve-factor analysis. As such, this Commission should maintain the *status quo* and reaffirm the Approved Route as the appropriate routing in the area of Muirhead Springs Forest Preserve and Plato Center.

February 3, 2015

Respectfully submitted,

Michael Petersdorf, Sarah Petersdorf,  
and Ellen Roberts Vogel,



---

William M. Shay  
Jonathan LA Phillips  
Their attorneys  
Shay Phillips, Ltd.  
456 Fulton St., Suite 255  
Peoria, IL 61602  
[wshay@skplawyers.com](mailto:wshay@skplawyers.com)  
[jphillips@skplawyers.com](mailto:jphillips@skplawyers.com)  
309.494.6155