



TABLE OF CONTENTS

**I. ATXI FAILED TO LAY A PROPER FOUNDATION FOR THE TESTIMONY OF  
NICOLAS ANITSAKIS.....3**

**II. ATXI FAILED TO NEGOTIATE IN GOOD-FAITH WITH DR. TRASTER.....4**

**III. ATXI'S APPRAISAL OF THE PROPERTY IS INCOMPLETE AND  
INACCURATE ..... 8**

**IV. CONCLUSION .....8**

**DR. TRASTER'S**  
**APPLICATION FOR REHEARING**

Pursuant to Section 200.880 of the Rules of the Illinois Commerce Commission, 83 Ill. Admin. Code § 200.880, Dr. Terry Traster ("Dr. Traster") requests a rehearing of the May 12, 2015 Order of the Illinois Commerce Commission (the "Commission") ("Order") entered in the above-captioned proceeding. As required by 83 Ill. Adm. Code 200.880 (b), the issues for which rehearing is sought are as follows:

**I. ATXI FAILED TO LAY A PROPER FOUNDATION FOR THE TESTIMONY OF NICOLAS ANITSAKIS.**

The Commission's decision to grant the Petition is erroneous in that the Order relies on inadmissible hearsay evidence from Nicolas Anitsakis.

As an attempt to show that ATXI engaged in good faith negotiations with Dr. Traster, ATXI submitted the direct testimony of Nicolas Anitsakis, the CLS Project Director, Electronic Transmission assigned to the ATXI Illinois Rivers Project. Anitsakis testified he oversees the CLS acquisition project inclusive of land agents, their direct supervisors and managers. ATXI Exhibit 2.0, at 62-65.

Anitsakis sponsored ATXI Exhibit 2.3, describing the exhibit as "a group exhibit containing packets of documentation specific to each owner of the Unsigned Properties." (Id. at 36-37.) ATXI Exhibit 2.3 Part T (Rev.), is the portion of the group exhibit pertaining to Dr. Traster's negotiations.

ATXI failed to lay the proper foundation for the entry of ATXI Exhibit 2.3 Part T (Rev.). Anitsakis' testified to an out of court statement which was offered as an assertion to show the truth of the matters therein, which is inadmissible hearsay. *See* Illinois Rules of Evidence, Rule 801. Anitsakis' testimony regarding the actions of other ATXI employees and their interactions

with Dr. Traster lacked a proper foundation. The Commission would have been well within its rights to allow Anitsakis to testify about his own interactions with Dr. Traster. The testimony provided was clearly hearsay, which is only allowable if an exception is articulated. Dr. Traster objected to this line of testimony at the Commission hearing and was overruled by the Administrative Law Judge. However, reliance on this testimony would be erroneous in that the testimony is hearsay devoid of any applicable exception. The Supreme Court of Illinois requires the Administrative Agency hearing a matter to exclude the hearsay records unless sufficient foundation as to the accuracy of the record is introduced into evidence. *Grand Liquor Co. v. Department of Revenue*, 67 Ill. 2d 195 (1977); *Eastman v. Department of Public Aid*, 178 Ill. App. 3d 993 (2nd Dist. 1989).

Anitsakis' testimony of other individuals contact with Dr. Traster was hearsay devoid of any exception to the rule. The Commission erroneously relied on this testimony to ascertain that ATXI acted in good-faith while negotiating with Dr. Traster. The Commission should have found ATXI Exhibit 2.3 Part T (Rev.) inadmissible, and in light that ATXI provided no further evidence of their interactions with Dr. Traster, the Commission should find that ATXI failed to negotiate in good-faith with Dr. Traster.

## **II. ATXI FAILED TO NEGOTIATE IN GOOD-FAITH WITH DR. TRASTER**

The Commission's decision to grant the Petition is erroneous in that the Order finds that ATXI acted in good-faith and reasonably during their negotiations with Dr. Traster. ATXI points to the numerous contacts with Dr. Traster and claims that any delay in the process was attributable solely to Dr. Traster. Ultimately, it appears that the Commission relied on the fact that Dr. Traster rejected the most current proposal from ATXI in determining that, even if ATXI had given Dr. Traster more time with the most recent proposal, the end result would have been

the same. For the foregoing reasons, we submit that the Commission's ruling that ATXI negotiated in good-faith was erroneous.

**a) Dr. Traster's rejection of the proposed route and compensation package at the hearing is irrelevant to the issue presented.**

In its Brief On Exceptions, ATXI asserts that Dr. Traster did not need more time to review his offer because he had already rejected it. ATXI Brief on Exceptions, page 12-13. ATXI's argument is that because Dr. Traster has reviewed and rejected their offer, that it has given him sufficient time, and therefore negotiated with good-faith. ATXI has caused the Commission to focus on Dr. Traster's actions, rather than whether or not ATXI has acted reasonably. The fact that Dr. Traster reviewed the offer and made a decision in a short amount of time is irrelevant to whether or not ATXI acted reasonably and negotiated in good faith.

ATXI's argument ignores the possibility that its delay in submitting a new offer, coupled with an abbreviated deadline for a decision could have made the difference in his decision. Moreover, Dr. Traster made his decision after the time ATXI initiated litigation against Dr. Traster. It is not a reasonable negotiation tactic to sue a person with the threat to take his property and then use his refusal to accept such an offer under those circumstances as justification to grant ATXI its section 8-509 Petition.

Even if we assume, *arguendo*, that Dr. Traster would have come to the same conclusion with additional time, that is not the issue before the Commission. The Commission is to determine whether ATXI acted in good-faith negotiations, regardless of the actions of others. If the Commission's Order remains, landowners will be facing a difficult precedent for further proceedings. ATXI would ultimately be entitled to bring a proceeding, make an offer to a landowner demanding an answer within days. Whether additional time would have yielded

different results is not for the Commission to consider. The Commission should only be concerned with whether or not ATXI's actions would be good-faith negotiations to a reasonable person. In the case at bar, ATXI submitted a new compensation package after proceedings had begun, and merely six days after submitting the offer, required Dr. Traster to come to a decision. We urge the Commission to find that this is not a case of good-faith negotiations.

**b) Extensive efforts aside, ATXI did not give Dr. Traster a reasonable amount of time to review an offer prior to initiating proceedings**

ATXI next asked the Commission to consider the totality of their extensive efforts and contacts with Dr. Traster. ATXI again fails to consider the strain and burden that these proceedings have placed on Dr. Traster, and looks to shift the issue away from their most recent actions.

Dr. Traster did not initiate these proceedings. It would be important to note that he has spent a significant amount of time trying to reach a settlement in this matter. ATXI points to its many contacts with Dr. Traster, dating all the way back to September of 2014, as a showing that they have negotiated in good faith. ATXI submits that the Commission would be ignoring these efforts if there was a finding that ATXI did not act in good faith. However, the Commission should not base its decision that the negotiations have been carried out in good faith simply because there has been plenty of discussion between the parties. The amount of negotiating between the parties speaks nothing of the substance of the negotiations. Contact and discussion alone does not show good faith, *per se*. Regardless, ATXI urges the Commission to base its decision on past events rather than considering the most recent actions. As discussed at length in the prior section, ATXI most recent tactics of submitting a new route and compensation package

after initiating these proceedings should not be considered good-faith, and their recent actions have polluted any prior attempts at a good-faith negotiation.

ATXI further states that any delay in their most recent submittal to Dr. Traster was attributable to the actions of Dr. Traster. Again, ATXI fails to consider the rather unsavory position that Dr. Traster has placed in due to these proceedings. Further, this line of reasoning seems to illuminate the flaws in ATXI's previous argument. As evidence from Dr. Traster's initial discussions with ATXI, Dr. Traster has emphasized that the trees on his property were the cause of the impasse from the onset of these negotiations. ATXI has known of this issue but waited until after initiating these proceedings to submit a route that would avoid the destruction of these trees. ATXI attempts to place the finger at Dr. Traster for this delay, but ATXI is the culpable party. ATXI should have known that the reroute proposed would have alleviated many, if not all, of Dr. Traster's concerns, and has failed to articulate any reason for not proposing that route prior to initiating these proceedings.

**c) The issue of Compensation should not be considered when ruling on good-faith negotiations.**

ATXI claims that, and the Commission's Final Order seems to accept, that Dr. Traster's only issue with ATXI and their new proposal is that of compensation. While it may be true that Dr. Traster feels under-compensated, the issue remains that the negotiations did not proceed in a manner that was fair to Dr. Traster. Dr. Traster did not volunteer his testimony at the hearing, and only when he was asked about his reasons did he answer that compensation was the reason. ATXI has brought compensation into focus in these proceedings, not Dr. Traster. Compensation remains a moot point when considering whether or not ATXI negotiated in good-faith.

Regardless of what monetary value was offered, ATXI's actions immediately leading up to, and subsequent to these proceedings, was far from good-faith negotiations.

### **III. ATXI'S APPRAISAL OF THE PROPERTY IS INCOMPLETE AND INACCURATE**

The Commission should allow rehearing regarding the accuracy and reliability of the appraisal used by ATXI during negotiations.

ATXI contracted with American Appraisal, who completed an analysis of the Property on April 29, 2014, over a year ago. Traster Exhibit 1.00, at 145-148. All subsequent negotiations have been based upon this appraisal. ATXI defends their position by asserting that property values usually do not change over the course of the year. Under this logic, ATXI asks the Commission to ignore the fact that this may have been a unique situation in where property values did change. Further, the Commission finds fault that Dr. Traster did not submit an appraisal of his own for consideration. However, the Commission seems to ignore the testimony of Dr. Traster, in which he acknowledges the sale of a specific piece of property comparable to his, which was not considered by ATXI. The record would support a finding that ATXI's use of a year old appraisal, with no attempt to supplement or update, was tantamount to use of an incomplete and inaccurate appraisal.

### **IV. CONCLUSION**

The Commission should grant rehearing for the reasons set forth above so that the property owners negatively impacted by the transmission lines on their property may be fully heard, and so that the decision of the Commission is based on a complete, evidentiary record.

Respectfully Submitted,

BYRON CARLSON PETRI & KALB, LLC

/s/ Brian R. Kalb

Brian R. Kalb, #6275228

Byron Carlson Petri and Kalb, LLC

411 St. Louis Street

Edwardsville, IL 62025

Telephone: (618) 655-0600

Facsimile: (618) 655-4004

Email: brk@bcpklaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent via electronic mail on the 9th day of June, 2015, electronically file with the Illinois Commerce Commission, the above Notice, together with copies of the documents referred to therein, and electronically served the same upon the persons identified on the Commission's official service list.

\_\_\_\_\_  
/s/ Brian R. Kalb  
Brian R. Kalb, #6275228  
Byron Carlson Petri & Kalb, LLC  
411 St. Louis Street  
Edwardsville, IL 62025  
Telephone: (618) 655-0600  
Facsimile: (618) 655-4004  
Email: brk@bcpklaw.com

**SERVICE LIST**

John D. Albers	<a href="mailto:jalbers@icc.illinois.gov">jalbers@icc.illinois.gov</a>
Kelly Armstrong Turner	<a href="mailto:kturner@icc.illinois.gov">kturner@icc.illinois.gov</a>
Hanna M. Conger	<a href="mailto:conger@whitt-sturtevant.com">conger@whitt-sturtevant.com</a>
Eric Dearmont	<a href="mailto:edearmont@ameren.com">edearmont@ameren.com</a>
Erika Dominick	<a href="mailto:edominick@ameren.com">edominick@ameren.com</a>
Edward Fitzhenry	<a href="mailto:efitzhenry@ameren.com">efitzhenry@ameren.com</a>
Kathleen Ratcliffe	<a href="mailto:ratcliffe@whitt-sturtevant.com">ratcliffe@whitt-sturtevant.com</a>
Greg Rockrohr	<a href="mailto:grockrohr@icc.illinois.com">grockrohr@icc.illinois.com</a>
Shannon K. Rust	<a href="mailto:rust@whitt-sturtevant.com">rust@whitt-sturtevant.com</a>
Rebecca Segal	<a href="mailto:segal@whitt-sturtevant.com">segal@whitt-sturtevant.com</a>
Brice A. Sheriff	<a href="mailto:bsheriff@ameren.com">bsheriff@ameren.com</a>
Albert Sturtevant	<a href="mailto:sturtevant@whitt-sturtevant.com">sturtevant@whitt-sturtevant.com</a>
Herman G. Bodewes	<a href="mailto:hbodewes@giffinwinning.com">hbodewes@giffinwinning.com</a>
Jason E. Brokaw	<a href="mailto:jbrokaw@giffinwinning.com">jbrokaw@giffinwinning.com</a>
Nancy M. Handegan	<a href="mailto:nhandegan@handeganlaw.com">nhandegan@handeganlaw.com</a>