

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois)
Petition for a Certificate of Public Convenience)
and Necessity, Pursuant to Section 8-406.1 of)
the Illinois Public Utilities Act, and an Order) Docket No. 15-0278
Pursuant to Section 8-503 of the Public Utilities)
Act, to Construct, Operate and Maintain a New)
High Voltage Electric Service Line in Adams)
County.)

MOTION TO STRIKE

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its undersigned counsel, pursuant to Section 200.190 of the Illinois Commerce Commission’s (“ICC” or “Commission”) Rules of Practice, 83 Ill. Adm. Code 200.190, hereby moves to strike certain portions of Ameren Transmission Company of Illinois’ (“ATXI” or the “Company”) Initial Brief (“IB”), filed by ATXI on September 1, 2015 or, in the alternative, seeks leave to file a Reply Brief *instanter*. In support of its motion, Staff states as follows:

Introduction

On September 1, 2015, pursuant to the procedural schedule established in this docket, ATXI, Intervenors, and Staff filed their Initial Briefs.

ATXI’s IB contains material misrepresentations of the record, improperly shifts the burden of proving which route is the lowest cost alternative from ATXI to Staff, and argues

facts not in evidence. Staff requests that four separate portions of the ATXI IB be stricken, as described more fully and for the reasons explained in detail below. In the alternative, if Staff's motion to strike those portions of the Company's IB is not granted, Staff respectfully requests leave to file the attached Reply Brief *instanter*.

Argument

Staff identified four separate places in the ATXI IB where the Company has attempted to make arguments that are procedurally improper, not supported by the record and/or are reliant on facts not in evidence. The arguments are prejudicial to Staff and accordingly should be stricken. The specific passages Staff seeks to have stricken, and the reasons for doing so, are set forth below.

1. ATXI Incorrectly Implies that Staff Relied Solely Upon Google Maps

ATXI states in its IB:

Staff stated in response to data requests that the Staff Blue Route was identified by looking at Google maps. (ATXI Ex. 12.0 at 6.)²

...

² The Commission has criticized reliance on Google maps alone for routing analysis, and indicated that such reliance was a "questionable practice." *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 76 (Feb. 20, 2014).

(ATXI IB, 25.)

This statement incorrectly implies that Staff witness Greg Rockrohr relied only upon Google maps, and as such, is a misrepresentation of the evidence in this matter. ATXI was aware that Staff did not rely solely on Google maps in designing Staff's Proposed Route, but rather used maps provided by the Company in this case and in

Docket 12-0598, as well as maps available from Adams County. In her rebuttal testimony, ATXI witness Emily Hyland includes the following question and answer:

Q. Has Mr. Rockrohr performed a routing study?

A. No. Based on his responses to discovery requests, the only analysis he performed was to *review ATXI's maps and maps on Google and Adams County*. (Response to ATXI-Staff 1.04.)

(ATXI Ex. 12.0, 6:111-112 (emphasis added).) The document to which Ms. Hyland refers,

Mr. Rockrohr's Response to ATXI-Staff DR 1.04, states:

ATXI-Staff 1.04 Produce all studies or analyses You performed, or which were performed on Your behalf, in selecting or developing Your Alternate Route.

Response:

Please see response to ATXI-Staff 1.01.

Mr. Rockrohr's Response to ATXI-Staff DR 1.01 in turn states:

ATXI-Staff 1.01 Describe the methodology You used to determine the Project Area for Your Alternate Route and produce all Documents You reviewed or relied upon in selecting and developing this Project Area.

Response:

Staff objects to the form of this Data Request, as the term "Project Area" is vague and undefined. Subject to and without waiving said objection, Mr. Rockrohr understands that the VORTAC that ATXI identifies in its petition prevents it from constructing its proposed transmission line between Quincy and Meredosia using the route that the Commission approved in Docket No. 12-0598. *Mr. Rockrohr used ATXI's maps provided in this docket and Docket No. 12-0598 in combination with maps provided on the internet by Google and Adams County* to identify what he believes to be the least-cost route that would both eliminate any conflict with the VORTAC and allow ATXI to construct its transmission line between Quincy and Meredosia.

(ATXI-Staff 1.01 (emphasis added).) Mr. Rockrohr's responses to both ATXI-Staff 1.01 and 1.04 are attached hereto for reference as Attachment A.

Mr. Rockrohr clearly stated that he relied on the maps provided by the Company and on maps available on line from Adams County *in addition to* Google maps. The Company's selective recitation of the facts misstates ATXI's own sworn testimony and undermines Mr. Rockrohr's credibility and professionalism. This statement is a material misrepresentation of the facts in evidence, is highly prejudicial to Staff, and should be stricken from the Company's Initial Brief. In the alternative, if the statement is not stricken from ATXI's Initial Brief, Staff requests leave to file the accompanying Reply Brief *instanter* to clarify the record for the Commission.

2. ATXI's IB Improperly Shifts the Burden of Proof onto Staff

In its IB, ATXI argues:

Staff may attempt to place responsibility for this lack of evidence regarding the environmental, social, and land use impacts of its proposed route on ATXI. Although ATXI conducted only a preliminary analysis of the Staff Blue Route, that preliminary analysis was above-and-beyond what ATXI was required to do. Section 8-406.1 of the Act requires ATXI to present a primary and alternate right of way, which it did. See 220 ILCS 5/8-406.1. ATXI was not obligated—by statute, regulation, or Commission practice—to conduct a routing study of a route it did not propose, and certainly not for a route that is 10 miles beyond the Project Area. Such a requirement has never been imposed on any utility in any prior certificate proceeding. Although the Commission typically permits Staff and Intervenor to propose alternative routes in certificate proceedings, that is not a right guaranteed to Staff and Intervenor by Section 8-406.1, which does not mention route proposals by parties other than the utility. *Id.* If a party chooses to undertake the responsibility of proposing an alternate route, it should face no less of a burden to demonstrate that its preferred route is the least-cost route,

compared to all other routes proposed in the proceeding. It should not be permitted to delegate study of its proposed route to the utility. Otherwise, permitting parties to propose routes that they have not analyzed, and then requiring the utility to undertake analysis, would undermine the route selection process. Parties could simply draw lines on a map—as many as they chose—and in doing so, require the utility to undertake extensive environmental and routing analysis, which would then be presented to the Commission in its entirety. The Commission would be required to sift through mountains of data regarding routes proposed by parties that could not be bothered to determine whether the route was viable from a routing perspective before proposing it.

(ATXI IB, 26-27.)

In the forgoing passage, the Company improperly attempts to shift the burden for identification of the least cost route to Staff. This is improper burden shifting and the portions of ATXI's IB that support this approach should be stricken.

ATXI clearly bears the burden of proof in this proceeding. See e.g., Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53 (1981) (applying common law rule that parties seeking relief from administrative agency has the burden of proof). The term “burden of proof” includes the burden of going forward with the evidence and the burden of persuading the trier of fact. People v. Ziltz, 98 Ill. 2d 28, 43 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. Ambrose v. Thornton Twp. School Trustees, 274 Ill. App. 3d 676, 680 (1st Dist. 1995), appeal denied, 164 Ill. 2d 557 (1995).

Section 8-406.1 of the Act requires the Commission grant a CPCN upon a showing, among other things, that a route is least cost. 220 ILCS 5/8-406.1. Staff and Intervenor often propose alternative routes in transmission line routing proceedings, both when the Petition is filed under Section 8-406 of the Public Utilities Act (which does not

mention alternate routes) or under Section 8-406.1 of the Public Utilities Act (which requires the Company to identify a primary and one or more alternate routes). 220 ILCS 5/8-406; 220 ILCS 5/8-406.1(a)(1)(B)(viii). Requiring the Company to identify, at a minimum, a primary and alternate route underscores the Company's obligation to drive the process. To require Staff or intervening parties to provide the same level of extensive environmental and detailed routing analysis for a less-costly route – when the Company already should have the information available, as it is *required* to build the least cost route – improperly shifts the burden onto the party that proposes the alternate route. When a viable less costly alternative route is proposed, it is the Company's obligation to fully evaluate the alternative route because the Company alone decides when and if to file and whether to file under the expedited provision. ATXI's argument allows the Commission to fully consider only those routes proposed by the Company. If the Company is allowed to argue that Staff and each party must undertake the detailed environmental, social and land use impact analyses that the Company admittedly had years to develop, the universe of possible solutions is essentially limited to the two proposed by the Company.

ATXI seeks the CPCN and, therefore, it is the Company's obligation to demonstrate that its preferred route is the least cost – not in the absence of alternatives but when all viable alternatives are considered. The Company's attempt to improperly shift this burden to Staff is prejudicial, and arguments to that effect should be stricken. In the alternative, if this argument is not stricken from ATXI's IB, Staff requests leave to file the accompanying Reply Brief *instanter*.

3. ATXI Wrongly Asserts that Staff Did Not Analyze the Environmental, Social or Land Use Impacts of the Staff Route

In its IB, ATXI IB states:

Staff did not analyze the environmental, social, or land use impacts of the Staff Blue Route. ATXI's preliminary analysis revealed that the Staff Blue Route would result in environmental and land use impacts that are not present along ATXI's proposed routes, and which were not considered in Staff's conclusion that the Staff Blue Route is the least-cost route.
(ATXI IB, 28.)

This statement is completely erroneous and it should be stricken. Mr. Rockrohr's testimony in this proceeding on the environmental impacts of Staff's proposed route recognizes that Staff's proposed route would require more tree clearing. (Staff Ex. 1.0, 6:250-257.) Mr. Rockrohr also testified as to land use impacts, stating that Staff's proposed route parallels the I-172 corridor as well as section and property lines. (Staff Ex. 1.0, 6:241.) Further, Mr. Rockrohr's testimony identifies that Staff's route is in proximity to fewer residences than any of the other proposed routes. (Staff Ex. 1.0, Attachment B.) In fact, Staff's proposed route clearly impacts fewer residences than any of the other three alternatives. There are at least 19 residences within 1000 feet and at least three residences within 300 feet of each of the three other routes. (Id.; ATXI Ex. 12.0, 261-262.)

Because ATXI's argument mischaracterizes Staff's testimony, it should be stricken from the Company's IB as prejudicial. In the alternative, if the statement is not stricken from ATXI's IB, Staff requests leave to file the accompanying Reply Brief *instanter*.

4. ATXI Improperly Argues Facts Not in Evidence

In its IB, ATXI states:

And this estimate of the cost to construct the Staff Blue Route is aggressively low—it does not include the cost of tree clearing, or the cost of pole adjustments to accommodate landowners.

(ATXI IB, 23.)

The above statement argues facts not in evidence and accordingly must be stricken. At no point in the proceeding did any party's witness testify that ATXI's estimate of the cost to construct Staff's route was "aggressively low," as demonstrated by the fact that ATXI failed to provide a citation for this contention. Further, there was no evidence presented by ATXI, Staff, or any party about the need for pole adjustments to accommodate landowners, so any reference to those additional "costs" is improper. Because ATXI's assertion is not supported by any record evidence it is prejudicial to Staff. Accordingly, ATXI's assertion should be stricken from the Company's IB. In the alternative, if the statement is not stricken from ATXI's Initial Brief, Staff requests leave to file the accompanying Reply Brief *instanter* to clarify the record for the Commission.

It is worth noting that ATXI's evaluation of Staff's route and suggestion that ATXI's estimate of the cost to build the route is "aggressively low" is at odds with the Company's argument, discussed in Section 2, above, that the Company has not analyzed Staff's route. If the Company has not, in fact, analyzed the route, than it is not in a position to draw any conclusions about the cost of that route. If it has analyzed the Route, there is no justification for the Company to refuse to provide the data necessary to analyze Staff's Route side by side with the other three routes to determine the least cost alternative.

Conclusion

ATXI's IB contains misrepresentations of the record, assumes facts not in evidence, and improperly attempts to shift the burden of proof onto Staff.

WHEREFORE Staff respectfully requests that the portion of ATXI's Initial Brief detailed above be stricken from the record or, alternatively, that Staff be permitted to file a Rebuttal Brief *instanter*.

Respectfully submitted,

KELLY A. TURNER
MARCY A. SHERRILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Phone (312) 793-3305
Fax (312) 793-1556
kturner@icc.illinois.gov
msherrill@icc.illinois.gov

September 9, 2015

*Counsel for the Staff of the
Illinois Commerce Commission*

Docket No. 15-0278
Response to ATXI's
First Set of Data Requests to ICC Staff
June 9, 2015

ICC Person Responsible: Greg Rockrohr
Title: Senior Electrical Engineer, Safety & Reliability Division
Business Address: Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Telephone: 217/524-0695

ATXI-Staff 1.01 Describe the methodology You used to determine the Project Area for Your Alternate Route and produce all Documents You reviewed or relied upon in selecting and developing this Project Area.

Response:

Staff objects to the form of this Data Request, as the term "Project Area" is vague and undefined. Subject to and without waiving said objection, Mr. Rockrohr understands that the VORTAC that ATXI identifies in its petition prevents it from constructing its proposed transmission line between Quincy and Meredosia using the route that the Commission approved in Docket No. 12-0598. Mr. Rockrohr used ATXI's maps provided in this docket and Docket No. 12-0598 in combination with maps provided on the internet by Google and Adams County to identify what he believes to be the least-cost route that would both eliminate any conflict with the VORTAC and allow ATXI to construct its transmission line between Quincy and Meredosia.

Docket No. 15-0278
Response to ATXI's
First Set of Data Requests to ICC Staff
June 9, 2015

ICC Person Responsible: Greg Rockrohr
Title: Senior Electrical Engineer, Safety & Reliability Division
Business Address: Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Telephone: 217/524-0695

ATXI-Staff 1.04 What factors or criteria did You consider in selecting or developing Your Alternate Route? List the factors or criteria You identified in order of their importance to Your selection or development of Your Alternate Route.

Response:

When developing the alternate route that Mr. Rockrohr presented in direct testimony, Mr. Rockrohr sought a route between Quincy and Meredosia that would (a) eliminate ATXI's conflict with the VORTAC; (b) be least-cost to construct while minimizing externalities such as impacts on landowners.

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**REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

I. INTRODUCTION

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Illinois Administrative Code (83 Ill. Adm. Code 200.800), respectfully submits its reply brief in the above-captioned matter *instanter*.

II. ARGUMENTS

In its Initial Brief, Ameren Transmission Company of Illinois (“ATXI” or the “Company”) materially misrepresents the record, improperly shifts the burden for identifying the least cost alternative onto Staff, and argues facts not in evidence. Staff presents a response to only those arguments made in the Company’s Initial Brief (“IB”) for the sake of brevity. To the extent that Staff remains silent in this Reply Brief on any matter on which Staff has previously stated a position, such silence should not be construed as a waiver or withdrawal of said previous position.

A. ATXI Incorrectly Implies that Staff Relied Solely Upon Google Maps

In its initial brief, ATXI states:

Staff stated in response to data requests that the Staff Blue Route was identified by looking at Google maps. (ATXI Ex. 12.0 at 6.)²

...

² The Commission has criticized reliance on Google maps alone for routing analysis, and indicated that such reliance was a “questionable practice.” *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh’g at 76 (Feb.20, 2014).

(ATXI IB, 25.)

This statement materially and utterly misrepresents the facts in evidence by incorrectly implying that Staff witness Greg Rockrohr relied only on Google maps. Staff did not rely solely on Google maps in designing Staff’s Proposed Route, but rather used maps provided by the Company in this case and in Docket 12-0598, as well as maps available from Adams County, as shown in the record: In her rebuttal testimony, ATXI witness Emily Hyland includes the following question and answer:

Q. Has Mr. Rockrohr performed a routing study?

A. No. Based on his responses to discovery requests, the only analysis he performed was to *review ATXI’s maps and maps on Google and Adams County*. (Response to ATXI-Staff 1.04.)

(ATXI Ex. 12.0, 6:111-112 (emphasis added).) The document to which Ms. Hyland refers,

Mr. Rockrohr’s Response to ATXI-Staff DR 1.04, states:

ATXI-Staff 1.04 Produce all studies or analyses You performed, or which were performed on Your behalf, in selecting or developing Your Alternate Route.

Response:

Please see response to ATXI-Staff 1.01.

Mr. Rockrohr’s Response to ATXI-Staff DR 1.01 in turn states:

ATXI-Staff 1.01 Describe the methodology You used to determine the Project Area for Your Alternate Route and produce all Documents You reviewed or relied upon in selecting and developing this Project Area.

Response:

Staff objects to the form of this Data Request, as the term “Project Area” is vague and undefined. Subject to and without waiving said objection, Mr. Rockrohr understands that the VORTAC that ATXI identifies in its petition prevents it from constructing its proposed transmission line between Quincy and Meredosia using the route that the Commission approved in Docket No. 12-0598. *Mr. Rockrohr used ATXI’s maps provided in this docket and Docket No. 12-0598 in combination with maps provided on the internet by Google and Adams County* to identify what he believes to be the least-cost route that would both eliminate any conflict with the VORTAC and allow ATXI to construct its transmission line between Quincy and Meredosia.

(ATXI-Staff 1.01 (emphasis added).)

In response to ATXI’s Data Request, Mr. Rockrohr clearly states that he relied on the maps provided by the Company and on maps available on line from Adams County *in addition* to Google maps. This is reflected in the Company’s sworn testimony. The Company’s assertion that Mr. Rockrohr relied solely on Google Maps is completely contrary to the evidence, misstates ATXI’s own sworn testimony and undermines Mr. Rockrohr’s credibility and professionalism.

The Company relies upon their erroneous contention that Mr. Rockrohr reviewed only Google maps in developing Staff’s Route to support their argument that Staff’s Route “was selected solely based upon one criterion and has not been adequately studied.” Given ATXI’s reliance upon this misstatement of facts, its argument must be rejected.

B. ATXI Has the Burden of Demonstrating its Route is the Least Cost Alternative

The Company improperly attempts to shift the burden for identification of the least cost route onto Staff. ATXI clearly bears the burden of proof in this proceeding. See e.g., Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53 (1981) (applying common law rule that parties seeking relief from administrative agency has the burden of proof). The term “burden of proof” includes the burden of going forward with the evidence and the burden of persuading the trier of fact. People v. Ziltz, 98 Ill. 2d 28, 43 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. Ambrose v. Thornton Twp. School Trustees, 274 Ill. App. 3d 676, 680 (1st Dist. 1995), appeal denied, 164 Ill. 2d 557 (1995).

Section 8-406.1 of the Act requires the Commission grant a CPCN upon a showing, among other things, that a route is least cost. 220 ILCS 5/8-406.1. Staff and Intervenors often propose alternative routes in transmission line routing proceedings, both when the Petition is filed under Section 406 of the Public Utilities Act (which does not mention alternative routes) or under Section 406.1 of the Public Utilities Act (which requires the Company to identify a primary and one or more alternate routes). Requiring the Company to identify, at a minimum, a primary and alternative route serves only to underscore the Company’s obligation to drive the process. To require Staff or intervening parties to provide the same level of extensive environmental and detailed routing analysis for a less-costly route – when the Company should already have the information available, as it is *required* to build the least cost route – improperly shifts the burden onto the party that proposes the alternate route. When a viable, less-costly alternative route is proposed, it is the Company’s obligation to fully evaluate the alternative route because the Company

and the Company alone decides when and if to file and whether to file under the expedited provision.

What the Company really advocates is that the Commission can only evaluate and consider routes proposed by the Company. If the Company is allowed to argue that Staff and each party must on its own undertake detailed environmental, social and land use impact analyses that the Company admittedly had years to develop, the universe of possible solutions is essentially limited to the two proposed by the Company. In other words, the Commission's only option is to pick the least-cost option proposed by the Company, without consideration of the alternatives proposed by other expert witnesses or parties. This argument is contrary to ATXI's own practice in this docket. For example, ATXI supported the Schoenekase Adjustment, the agreed route stipulated to by the Company and the Intervenors, even though the route was proposed by an Intervenor. The Company had no objection to fully evaluating that route and ultimately adopting it. Staff's proposed route should be afforded the same treatment. If the Company is willing to provide a detailed analysis of the Schoenekase Adjustment, it should be required to provide the same data for Staff's Route.

Contrary to the Company's assertion, the Commission is not being asked to sift through "mountains of data." (ATXI IB, 27). There are not an infinite number of routes under consideration; there are only four. Staff's route is feasible, practical, supported by evidence and testimony, and – most importantly – least costly. Staff does not have the burden of demonstrating that Staff's route should be selected. In fact, should the Company's analysis demonstrate that one of the other three routes is a lower cost

alternative than the route proposed by Staff, Staff would support that other route. That said, Staff believes the route it has proposed is the least cost alternative.

The burden to demonstrate that the route ATXI advocates is the least cost alternative falls squarely on the Company. Because the Company seeks the CPCN, the Company is obligated to demonstrate that its preferred route is the least cost – not in the absence of alternatives but when all viable alternatives are considered. Given that the record shows that the route proposed by Staff costs less than the comparable route endorsed by ATXI for the Quincy-Meredosia segment, this argument should be rejected and Staff's proposal should be adopted.

C. ATXI Wrongly Asserts that Staff Failed to Analyze the Environmental, Social and Land Use Impacts of Staff's Proposed Route

ATXI erroneously argues that Staff did not analyze the environmental, social, or land use impacts of the Staff Blue Route. (*Id.*, 28.) This argument is contrary to the evidentiary record. In his testimony, Mr. Rockrohr recognized and considered that Staff's proposed route would require more tree clearing. (Staff Ex. 1.0, 11:250-257.) Staff also testified on the land use impacts of its proposed route, stating that the route parallels the I-172 corridor as well as section and property lines. (Staff Ex. 1.0, 12:241.) Moreover, Staff testified that its proposed route is in proximity to fewer residences than any of the other routes. (Staff Ex. 1.0, Attachment B.) In fact, Staff's proposed route clearly impacts fewer residences than any of the other alternatives. Each of the other three alternatives have at least 19 residences within 1000 feet, and at least three residences within 300 feet of the proposed route. (*Id.*; ATXI Ex. 12.0, 261-262.) No evidence has been produced by

any party which tends to show the environmental, social or land use impacts of Staff's route are more significant than the impacts upon any other route.

Notwithstanding Staff's analysis of the potential environmental, social and land use impacts of Staff's proposed route, those factors are not controlling of the Commission's decision. Section 406.1 clearly indicates the route approved by the Commission must be the "least cost" means of satisfying the objective of "satisfying the service needs of the public utility's customers" or promoting "the development of an effectively competitive electricity market..." (220 ILCS 5/8.406.1(f)(1)). Given that Staff's route is the least-cost option, Staff's proposed route should be approved by the Commission.

D. Staff's Route Proposal Would Cost the Least to Construct

ATXI suggests its "estimate of the cost to construct the Staff Blue Route is aggressively low because it does not include the cost of tree clearing, or the cost of pole adjustments to accommodate landowners." (ATXI IB, 28).

This paragraph argues facts not in evidence. At no point did anyone testify that ATXI's cost estimate to construct Staff's route was "aggressively low" and ATXI failed to provide a citation for this contention. Further, there was no evidence presented about the need for pole adjustments to accommodate landowners, so there is no cost to consider.

It is worth noting that ATXI's conclusion that the Company's estimate of the cost to build the route is "aggressively low" is at odds with the Company's argument, discussed in Section B, above, that the Company has not analyzed Staff's route. If the Company has not, in fact, analyzed the route, than it is not in a position to draw any conclusions about the cost of that route. If it has analyzed the Route, there is no justification for the

Company to refuse to provide the data necessary to analyze Staff's Route side by side with the other three routes to determine the least cost alternative.

The evidence in this proceeding clearly shows that Staff's proposal is the least-cost option and accordingly, should be the route adopted by the Commission.

III. CONCLUSION

For all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that the recommendations set forth in Staff's Initial Brief and this Reply Brief be adopted in their entirety.

Respectfully submitted,

KELLY A. TURNER
MARCY A. SHERRILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Phone (312) 793-3305
Fax (312) 793-1556
kturner@icc.illinois.gov
msherrill@icc.illinois.gov

September 9, 2015

*Counsel for the Staff of the
Illinois Commerce Commission*