**Section 700.APPENDIX J Illinois Commerce Commission's Agricultural Land Preservation Policy Statement and Cooperative Working Agreement**

PREFACE

On August 19, 1982, Governor James R. Thompson signed into law the Farmland Preservation Act (Ill. Rev. Stat. 1985, ch. 5, par. 1301 et seq.), which required the Illinois Commerce Commission to develop an Agricultural Land Preservation Policy Statement and Cooperative Working Agreement. The following Policy Statement and Working Agreement are submitted in accordance with the Act.

POLICY

Recognizing that the objectives of the Illinois Commerce Commission must be in accord with the overall goals of the state and of the requirements of The Public Utilities Act (Ill. Rev. Stat. 1985, ch. 111⅔, par. 8-406 and 8-509) and the Illinois Commercial Transportation Law (Ill. Rev. Stat. 1985, ch. 95½, par. 18c-8201 and 18c-8401), it is the policy of the Illinois Commerce Commission, in carrying out its regulatory responsibilities, to preserve Illinois farmlands to the extent practicable and feasible, giving appropriate consideration to the state's social, economic, conservation, aesthetic, environmental and energy goals, all subject to court review for compliance with the Act.

BACKGROUND AND PERSPECTIVE

Under Section 8-406 of The Public Utilities Act or Section 18c-8201 of the Illinois Commercial Transportation Law, no utility or common carrier by pipeline may begin construction of any new plant, equipment or facility, which is not in substitution of and/or addition to or extension of existing facilities, without first obtaining a Certificate of Public Convenience and Necessity from the Commission. Under Section 8-509 of The Public Utilities Act or Section 18c-8401 of the Illinois Commercial Transportation Law, a utility or common carrier by pipeline may take or damage private property in a manner provided by the law of eminent domain when directed by the Commission to construct facilities requiring the use of private property. The Illinois Commerce Commission does not acquire any land on its own behalf for capital improvements.

IMPACT MITIGATION

Pursuant to the provisions of The Public Utilities Act and the Illinois Commercial Transportation Law, the Illinois Commerce Commission has established rules under which utilities and common carriers by pipeline may seek Certificates of Public Convenience and Necessity. Included within these rules are notice requirements to interested parties. The Commission also conditions certificates granted for cross-country electric transmission lines so as to limit the impact upon farming operations to a minimum level.

Notice of all certificate applications filed by fixed utilities and common carriers by pipeline will be provided to the Illinois Department of Agriculture by mailing a copy of the Daily Filing Reports to the Department. Upon request by the Department to the Chief Clerk's Office, the Chief Clerk's Office will mail notice of hearings and other activities with respect to any filed certificate application proceeding pending before the Commission. The Department of Agriculture may, at its option, seek to be a party to any certificate proceeding.

If a project is to be located outside the corporate boundaries of a municipality and will require the purchase of an easement or land by fee simple acquisition, evidence to be presented by the utility or common carrier by pipeline in a certificate application shall include the following information, provided a site-specific project (e.g., power generating plant) will require more than 1 acre of land, or a linear-type project (e.g., electric transmission line) will require 3 acres or more of land per project mile:

A) For linear-type projects:

1) What length will be placed entirely on public right-of-way?

2) What length will be placed in whole or in part upon privately owned land?

3) What is the easement width needed?

B) On privately owned land in which easements will be purchased:

1) What is the location of easements which must be purchased, as indicated on a general county highway map(s)?

2) What is the current land use listed by acreage of crop land, pasture land, wooded or brushy land, or other land?

C) On privately owned land to be purchased via fee simple acquisition:

1) What is the location of the land which must be purchased via fee simple acquisition as indicated on a general county highway map(s)?

2) What is the current land use listed by acreage of crop land, pasture land, wooded or brushy land, or other land?

3) What is the proposed use of the land by the utility?

D) From how many private land owners must land be purchased:

1) Via easements?

2) Via fee simple acquisition?

E) For underground facilities:

1) How many inches of top cover will be placed above the top of the buried facility?

2) To what extent will the utility seek to discover field title damaged by construction operations anywhere within the construction easement and additional working rights area?

3) What method will be employed in repairing damaged field tile?

F) For electric transmission/distribution projects utilizing above-ground structures:

1) What type of support structures are proposed?

2) How many support structures will be placed on each of the following land uses?

a) Crop land.

b) Pasture land.

c) Wooded or brushy land.

d) Existing utilization lines (field borders, farm roads, grassed waterways, etc.).

e) Public right-of-way.

f) Other lands.

3) If the electric line parallels public right-of-way, but is to be placed on private land, how far from the edge of the right-of-way will the center line of the support structure be placed?

4) To what extent will the utility seek to discover field tile damaged by construction operations anywhere within the construction easement and working rights area, and how will damaged tile be repaired?

G) On lands disturbed by construction, what methods will the utility employ to:

1) Restore soil productivity, including the alleviation of soil compaction, on crop land, pasture land, or wooded or brushy land once construction has been completed?

2) Restore surface drainage and repair damaged conservation practices once construction has been completed?

3) Control excessive erosion during and after construction?

4) Ensure that all construction debris is removed once construction has been completed?

H) What is the responsibility of the utility to correct or compensate landowners for damages to private property or crops caused by construction and future maintenance or repair?

IMPACT STATEMENT

Pursuant to Section 8-406(b) of The Public Utilities Act, "no public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or extension thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."

Pursuant to Section 18c-8201(1)(a) of the Illinois Commercial Transportation Law, no person shall begin or continue construction of any pipeline or other facilities, other than the repair or replacement of existing pipelines or facilities, for use in operation as a common carrier by pipeline unless the person possesses a certificate in good standing.

Many construction projects are in substitution of existing facilities or extensions to existing facilities or additions to existing facilities. For this reason, most construction projects do not require approval by the Commission.

The Commission has no knowledge of the amount of farmland conversion that occurred under these exceptions to the Act. Land conversions reported under this impact statement are, therefore, limited to conversion associated with certificate applications filed with the Commission during the years 1978 through 1986.

Electric

(certificates applied for)

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Number of Applications | Estimated Acres of Land Conversion | Estimated Miles of Rights-of-Way With Partial Land Conversion |
|  |  |  |  |
| 1978 | 12 | N/A | 82 Est. |
| 1979 | 8 | N/A | 32 Est. |
| 1980 | 7 | N/A | 38 Est. |
| 1981 | 3 | N/A | 24 Est. |
| 1982 | 2 | N/A | 40 Est. |
| 1983 | 5 | N/A | 45 Est. |
| 1984 | None |  |  |
| 1985 | 8 | .300 Est. | 30 Est. |
| 1986 | 4 | 40 Est. | 62 Est. |

N/A – Not readily available but the acres converted were negligible.

Est. – Estimated.

Electric co-operatives and municipal utilities are not subject to the Illinois Commerce Commission's jurisdiction and do not need certificates from the Commission.

Gas

(certificates applied for)

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Number of Applications | Estimated Acres of Land Conversion | Estimated Miles of Rights-of-Way With Partial Land Conversion |
|  |  |  |  |
| 1978 | 0 | 0 | 0 |
| 1979 | 3 | 0 | 26 |
| 1980 | 3 | 0 | 4 |
| 1981 | None |  |  |
| 1982 | None |  |  |
| 1983 | 1 | N/A |  |
| 1984 | None |  |  |
| 1985 | 1 | N/A | 5 Est. |
| 1986 | 3 | 3.0 Est. | 10 Est. |

Telephone

(certificates applied for)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year | Number of Applications | Estimated Acres of Land Conversion | Estimated Miles of Rights-of-Way With Partial Land Conversion | |
|  |  |  |  | |
| 1978 | Certificate applications to provide telephone service to new land areas are nonexistent inasmuch as the total land area of Illinois is assigned the present operating telephone companies. | | |
| 1979 |
| 1980 |

Water and Sewer

(certificates authorized)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | Number of Applications | Estimated Acres of Land Conversion | | Estimated Miles of Rights-of-Way With Partial Land Conversion | |
|  |  |  |  | |
| 1978 | 19 | N/A | N/A | |
| 1979 | 22 | N/A | N/A | |
| 1980 | 4 | N/A | N/A | |
| 1981 | 4 | N/A | N/A | |
| 1982 | 3 | N/A | N/A | |
| 1983 | 5 | N/A | N/A | |
| 1984 | 2 | N/A | N/A | |
| 1985 | 5 | N/A | N/A | |
| 1986 | 6 | N/A | N/A | |

N/A – Not readily available.

Water utilities obtain certificates to serve areas. Nearly all new subdivisions are adjacent to existing built-up areas. The lands to be served are already platted for subdivisions. Acres are not readily available. Of the 9 certificate applications containing references to acres, we found that 624 acres were covered by the applications to serve 1,587 residential and commercial units. Another application covered 6,700 acres by a development company but didn't list the units to be served in the heading of the case.

Common Carrier by Pipeline

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Year | Number of Applications | Estimated Acres of Land Conversion | Estimated Miles of Rights-of-Way With Partial Land Conversion | |
|  |  |  |  | |
| 1986 | 1 | 1.20 | 110 Est. |

ILLINOIS COMMERCE COMMISSION

COOPERATIVE WORKING AGREEMENT

Pursuant to Section 4 of the Farmland Preservation Act, the Illinois Commerce Commission (ICC) and the Illinois Department of Agriculture (DOA) hereby agree to the following:

1. A copy of the Daily Filing Reports, which identify all certificate applications submitted to the ICC by the fixed utilities and common carriers by pipeline, will be provided to the DOA for the duration of this agreement.

2. The DOA will review the reports to determine if the certificate applications qualify for the DOA's Study of Agricultural Impacts (8 Ill. Adm. Code 700.Appendix A: Exhibit B).

3. Detailed project impact information relative to certificate applications is not available from the ICC. Therefore, the DOA will submit a request to the respective utility or common carrier by pipeline to obtain the needed data for the required Study of Agricultural Impacts.

4. The DOA may exercise its option to seek to intervene in certificate application proceedings. If a utility or common carrier by pipeline is unwilling to provide project impact information that is required for the Study of Agricultural Impacts, the DOA will petition the ICC to direct the utility or common carrier by pipeline to submit said information.

5. Pursuant to its role as Intervenor, the DOA will submit written and oral testimony to the ICC which reflects the results of the Study of Agricultural Impacts.

6. The ICC will consider the results of the DOA's study in determining whether a Certificate of Public Convenience and Necessity will be issued and/or modified for the project proposal.

7. All changes to this cooperative agreement shall be made after consultation with and concurrence by both parties.

(Source: Amended at 11 Ill. Reg. 19011, effective November 10, 1987)