

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY
OF ILLINOIS

Petition for Certificate of Public Convenience and Necessity, pursuant to Section 8-406 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of *Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby*, Illinois.

Docket No. 12-0598

REPLY BRIEF OF PDM

(Coalition of Property Owners and Interested Parties in Piatt, Douglas and Moultrie Counties)

IV. Least-Cost and the Proposed Transmission Line Routes

F. Pana - Kansas

3. Route Location

c. Mt. Zion - Kansas

Four points are addressed in this reply. First, ATXI and MCPO make several statements in their briefs that, based on the record, are false. Second, ATXI argues certain factors to support its routes on other segments, but then dismisses those same factors as irrelevant on this segment. Third, ATXI and MCPO misrepresent public support for and against MCPO's route. Fourth, as the ICC's own staff concludes in its initial brief, the Commission would be better served by simply excluding this segment from the CPCN than by approving ATXI's present recommendations.

I. ATXI and MCPO Make Several False Statements in their Briefs.

ATXI and MCPO falsely state MCPO's route costs less. ATXI and MCPO use a sleight-of-hand to falsely state MCPO's route costs less than ATXI's rebuttal recommended route. ATXI (p.75) and MCPO (p.11) both cite Jerry Murbarger's base cost estimate of the MCPO route at \$126,511,000 (ATXI Ex. 16.3 (Rev.) p.7), but fail to inform the Commission that Mr. Murbarger testified that his estimates for intervenor routes were just "based on mileage" with "no other analyses" (R. p.368, 1.15-16). ATXI then compares that estimate to Mr. Murbarger's base cost estimate for the rebuttal recommended route at \$128,026,000, but again fails to inform the Commission that Mr. Murbarger testified that this estimate was based on "actual material cost, labor cost, engineering cost, real estate cost and environmental cost" (R. p.355, 1.22 - p.356, 1.2). In this way, ATXI and MCPO compare apples to oranges.

Had Mr. Murbarger used the same method of calculation for ATXI's recommended rebuttal route as he did for the MCPO route, the MCPO route would be over \$5 million more expensive (*see fn.2 infra*). ATXI and MCPO also omit that MCPO's own witness pegged the base cost for the MCPO route at \$129.1 million, higher than Mr. Murbarger's estimate for the rebuttal recommended route (MCPO Ex. 1.4, p.1). While on other segments ATXI treats it as a given that shorter routes cost less (see ATXI p.51), here it asks the Commission to believe the 3-mile longer MCPO route will be cheaper to construct.

ATXI and MCPO falsely suggest the stipulated route impacts less cropland. ATXI (p.76) and MCPO (p.30) use another sleight-of-hand to suggest that MCPO's route will impact less farmland than ATXI's rebuttal recommended route. As noted on p.11 of PDM's initial brief, the first page of both ATXI Ex. 4.5 and MCPO Ex. 2.3 show that MCPO's route affects more

cultivated crop acres than ATXI's rebuttal recommended route. These first pages are entitled "Route Comparison Summary - Land Use" and show how much of the route crosses farmland. ATXI and MCPO ignore these first pages and instead use the charts on the second page of each exhibit, which are entitled "Miscellaneous Features" one of which is "prime farmland."¹ It is unclear how MCPO witness Rudolph Reinecke could distinguish and state the subset of prime farmland on the MCPO route when he testified he had no idea how many land parcels his route easement would cross (R. p.616, 1.20-22).

ATXI falsely states the stipulated route parallels US Rt. 36. ATXI makes this statement on p.78. While both the MCPO route and US Rt. 36 run in a horizontal line, MCPO's route is at all times at least a mile distant from US Rt. 36, except when it crosses US Rt. 36 to get the route north of Moultrie County and again when it crosses back just at the eastern edge of Moultrie County. Thus, it is simply false to suggest MCPO has taken advantage of a paralleling opportunity. MCPO's route instead cuts directly through the center of parcel after parcel of valuable farmland, as MCPO Corrected Ex. 2.2, the route map, makes clear. ATXI's own evidence is that the public overwhelmingly considers agricultural uses most sensitive, and overwhelmingly prefers routes to run along roads (ATXI Ex. 4.3, App. C, Part 8, p.3, 5), both of which preferences MCPO's route design ignored in the area of US Rt. 36. The Illinois Supreme Court in *Ness v. ICC*, 67 Ill.2d 250, 253 (1977), found the ICC erred in granting a certificate for a 345kV line where the route had 7 miles of line "which does not follow fence lines and splits the affected farms." The Court based its ruling "especially as to the effect of farm splitting and the

¹ This omission is not inadvertent. At page 21, MCPO cites the cultivated crop number when that is more favorable to its position than the prime farmland number.

number of farms affected thereby” *Id.*, at 254. PDM urges the Commission to note pages 5, 6 and 7 (Piatt County) and pages 9, 10, 11, 12, 13 and 14 (Douglas County) of MCPO Corrected Ex. 2.2 - these show the MCPO line cutting right through the middle of *more than 27 miles* of parcel after parcel of cultivated farmland, not following a road, or a property line, or even a fence.

MCPO suggests that ATXI witnesses Hackman and Murphy support the stipulated route. MCPO states that Jeffrey Hackman testified that MCPO’s route is constructable and that ATXI concluded paralleling transmission lines was justified on MCPO’s route (MCPO p.26-27). What neither MCPO nor ATXI acknowledge is that not one single witness presented by ATXI ever stated that MCPO’s route was preferable to ATXI’s rebuttal recommended route.

MCPO states that Donell Murphy “did not disagree” MCPO’s route is less costly, similar in length and impacts significantly fewer residences, and states she had only one substantive criticism of the route (MCPO p.30). In fact, Ms. Murphy testified MCPO’s route was not viable and reaffirmed that testimony at trial (ATXI Ex. 13.0C (2d Rev.), p.53, 1.1143-50; R. p.769, 1.4-6). Ms. Murphy expressly stated ATXI’s rebuttal recommended route is “least cost” taking all factors into account (R. p.762, 1.5-7). She expressly stated the rebuttal recommended route is shorter than MCPO’s (R. p.771, 1.9-11). And she expressly testified to five, not one, substantive criticisms of MCPO’s route (R. p.762 - 1st reason, p.763 - 2nd reason, p.765 - 3rd reason, p.767 - 4th reason, p.768 - 5th reason).

MCPO falsely states ATXI witnesses did not identify any construction difficulties with its route. In fact, Jeffrey Hackman testified that parallel transmission lines, extensively used on MCPO’s route, are undesirable from a construction standpoint (ATXI Ex. 12.0, p.6,

1.110-21). As noted in PDM's initial brief p.17-18, the stipulated MCPO route uses extensive double- and triple-paralleling of transmission lines for 15 miles.

ATXI falsely states there is no record evidence that the stipulated route would have more maintenance cost. ATXI makes this assertion at p.75. This ignores the testimony of its own witness, Jeffrey Hackman, who testified that paralleling transmission lines is also "undesirable from an operations perspective" (ATXI Ex. 12.0, p.6, 1.116). ATXI argues in its brief (p.57) that a triple-line configuration MCPO proposed for its alternative Oreana Reinforcement is "an inferior solution." Yet ATXI asks the Commission to approve the MCPO Mt. Zion - Kansas route which has a lengthy triple-line configuration.

MCPO claims its route has fewer turning structures. This claim is highly suspect. MCPO contends its route has 29 severe turning structures (R. p.574, 1.8-10), which exactly matches the number of plainly visible turns on MCPO's route (see MCPO Corrected Ex. 2.2). This also is in line with Greg Rockrohr's testimony - he noted 27 "dead-end" structures on MCPO's initial (pre-"refined") route (ICC Staff Ex. 1.0R, p.46, Table 7). But MCPO fails to acknowledge that ATXI's rebuttal recommended route has fewer of these severe turns - 24 according to Donell Murphy (R. p.773, 1.17), 24 according to Greg Rockrohr (ICC Staff Ex. 1.0R, p.46., Table 7), and 24 as plainly visible on ATXI Ex. 13.1, p.7. Therefore, Mr. Dauphanias' claim that ATXI's line needs 52 severe turning structures (R. p.575, 1.16-18) to make 24 severe turns, whereas MCPO's line needs less structures (29) to make more equally severe turns (29), is illogical. The only reasonable inference is that MCPO and ATXI are counting structures in different ways.

MCPO falsely states its route has the least adverse impact. MCPO makes this statement on p.24. This is contrary to the testimony of ATXI's routing expert Donell Murphy who testified that MCPO's route was not viable (R. p.769, 1.4-6), and that ATXI's rebuttal recommended route "provides for the least cost outcomes taking all factors into account" (Id., p.762, 1.5-7).

ATXI claims MCPO's route is "best supported by the record." This statement at ATXI p.73 cannot possibly be true, when every one of ATXI's witnesses testified in support of ATXI's rebuttal recommended route, and when ATXI testified under oath at the trial that it was "confident" in its assessment that its rebuttal recommended route was the best route (R. p.774, 1.8-9). At trial, not one of ATXI's witnesses indicated they wished to change their direct testimony. Even MCPO's route designer Rudolph Reinecke testified he informed MCPO of a better route on the south side of US Rt. 36 (R. p.613, 1.11-19), but MCPO never presented that route to the Commission.

II. ATXI Argues Certain Factors on Other Segments, yet Dismisses the Same Factors as Irrelevant on this Segment.

ATXI lauds its comprehensive process for route development on other segments, but abandons it on this segment. At page 16, ATXI notes its rebuttal recommended routes are selected through a comprehensive process. At page 57, ATXI criticizes MCPO's route designers on another segment as having conducted a "piecemeal analysis" resulting in an "inferior solution." On the Mt. Zion - Kansas segment, ATXI testified that MCPO's route development was inferior, using far fewer routing considerations and using them subjectively (R. p.763, 4-7,

14-16). If ATXI wants the Commission to choose ATXI's preferred routes on other segments because of its more comprehensive route development analysis, then it cannot expect the Commission on this segment to choose the MCPO route, which lacks such comprehensive development.

ATXI criticizes intervenor alternatives on other segments that involve paralleling and crossing transmission lines, but ignores these key features on the stipulated route. On page 62, ATXI criticizes an intervenor route for paralleling an existing 138kV transmission line, and again for crossing an existing line. ATXI criticizes MCPO for triple-paralleling transmission lines on page 57. On page 45, ATXI states "ATXI prefers to avoid placing 345kV lines parallel to existing 138kV lines." Yet the route ATXI now asks the Commission to adopt has 15 miles of parallel lines, about half with a double-line configuration and half with a triple-line configuration, and the route crosses these existing lines three times! (See PDM's initial brief, p.17-18). Indeed, the number three routing consideration employed by MCPO is "minimization of length *not* parallel to existing known transmission lines" (MCPO Ex. 1.0, p.14, 1.282).

ATXI cites its strong preference for routing along roads and section lines, but ignores those preferences on this segment. As noted above, the MCPO route splits farm after farm through Piatt and Douglas Counties without regard to roads or section lines (see MCPO Corrected Ex. 2.2, particularly p.5-7, 9-14, showing over 27 miles of farm-splitting on MCPO's route). This is flatly contrary to ATXI's avowed preference for routing along roads and section lines (ATXI Ex. 4.3, Appendix C, Part 8, p.3, 5), particularly in these areas where roads run in straight lines. MCPO admits its route does not parallel section lines as well as ATXI's routes, on p.35.

ATXI on other segments argues it selected the superior route, but ignores that argument concerning this segment. ATXI states that its recommended routes were selected because they best resolve “the concerns raised by Intervenors, best reduce the potential for environmental impact, and are the least-cost option when all factors are taken into account” (p.20). That’s exactly what ATXI testified at trial for its Mt. Zion - Kansas rebuttal recommended route (R. p.762, 1.5-7; see also ATXI Ex. 13.0C (2d Rev.) p. 55, 1.1178-80, where ATXI testified its Mt. Zion - Kansas rebuttal recommended route “best balances and addresses concerns raised by multiple intervenors”). ATXI asks the Commission to ignore its own testimony.

ATXI uses route length differentials as a primary factor on other segments but treats the 3-mile longer length of MCPO’s route as irrelevant. ATXI states that the difference in length between the stipulated route and its alternate route is “nominal” (ATXI, p.72). MCPO also states the stipulated route length is “comparable” (MCPO, p. 11). Yet on the Pawnee - Pana segment, ATXI argues its second alternate route is preferred over its primary route because it is shorter, where the differential is 2.1 miles (ATXI, p.51, see ICC Staff Ex. 1.0R, p.39, Table 5). And on the Kansas - Indiana segment, ATXI cites distance as its first argument to support its alternate route over STPL Route 2, which is only 0.3 miles longer (ATXI, p. 78; see ICC Staff Ex. 1.0R, p.51, Table 9).

ATXI uses cost differentials as a primary factor on other segments but treats the higher cost of MCPO's route as irrelevant. ATXI states (falsely²) that the cost differential between its rebuttal recommended route and MCPO's route is \$3 million, a difference that it calls "nominal" (ATXI, p.72). Yet on the Pawnee - Pana segment, ATXI argues cost is a reason to select its second alternate route over its primary route, where the differential is \$750,000 (ATXI, p.51; see ICC Staff Ex. 1.0R, p.38, 1.812).

ATXI belittles PDM as the only objector to the MCPO route, but ignores the fact that MCPO was the only objector to ATXI's Rebuttal Recommended Route. ATXI twice argues only one party opposes the MCPO route (ATXI, p.73, 77), yet ignores that Donell Murphy, its own witness, testified that only one party opposed ATXI's rebuttal recommended route (ATXI Ex. 13.0C (2d Rev.) p.55, 1.1181-85). ATXI also ignores the testimony it submitted into evidence that its rebuttal recommended route "best balances and addresses concerns raised by multiple intervenors" (Id., 1.1178-80).

ATXI emphasizes that it secures public input but fails to note that public input was neither sought nor obtained on the MCPO route. ATXI states "a key element of the route siting analysis was public input" (ATXI, p.18), and even tries to argue that the MCPO route "best represents the consensus of interests of the parties and therefore is the optimal option" (ATXI, p.77). As just noted in the preceding paragraph, this is flatly contrary to its own testimony

² ATXI witness Murbarger estimated a base cost of the MCPO route at \$126,511,000 (ATXI Ex. 16.3 (Rev.) p.7), but testified that his estimates for intervenor routes were just "based on mileage" with "no other analyses" (R. p.368, 1.15-16). Therefore, Murbarger estimates the cost of the 69.2 MCPO route at \$1,828,000 per mile. Using the same method of analysis and the MCPO cost per mile, the 66.4 mile ATXI alternate route cost is \$121,379,000, making MCPO's route over \$5 million higher than ATXI's rebuttal recommended route.

provided to the Commission. Donell Murphy also testified that the MCPO route “does not fairly reflect public input” (R. p.765, 1.6-8).

III. ATXI and MCPO Misrepresent Public Support For and Against MCPO’s Route.

ATXI twice argues only one party opposes the MCPO route (ATXI, p.73, 77). On page 77, ATXI states that the MCPO route best represents the consensus of the parties. As noted above, this is the very same thing ATXI testified about its rebuttal recommended route (see ATXI Ex. 13.0C (2d Rev.) p.55, 1.1181-85, where Donell Murphy testified that only one party objected to ATXI’s route, and Id, 1.1178-80, where she testified ATXI’s route “best balances and addresses concerns raised by multiple intervenors” (Id., 1.1178-80)).

ATXI’s efforts to now about-face, and try to show support for the MCPO route, are unpersuasive. On page 77, ATXI argues three parties support MCPO’s route, but these three parties consist of itself, the route proponent MCPO, and Shelby County Landowners Group, a party that has absolutely no interest or stake in any route between Mt. Zion and Kansas. And it is rather incongruous for ATXI to assert its own support for the MCPO route when all of its witnesses and evidence support the rebuttal recommended route.

ATXI and MCPO ignore that Donell Murphy testified that in addition to ATXI, several other parties support ATXI’s alternate route, including Tarble Limestone Enterprises and the “Reed Interests” (ATXI Ex. 13.0, p.53, 1.1136-39). Brock-Jones Limited Partnership filed a brief on June 3 in support of ATXI’s rebuttal recommended route. So it is simply false to suggest the consensus of the parties supports the MCPO route.

In any event, there is significant opposition to the MCPO route. Reference to p.68 of ATXI's brief, the Mt. Zion - Kansas map, shows a multitude of objectors to the MCPO route, who are all part of the PDM group. The map demonstrates no argument can be made that the public favors MCPO's route over ATXI's alternate route. The Commission can take notice of dozens of public comments which have been filed in this proceeding in opposition to MCPO's route. But most significantly, it is simply unfair for ATXI to argue lack of opposition to its stipulated route, when the stipulation didn't exist until the day before trial. As noted in PDM's initial brief, the case caption doesn't even include Piatt and Douglas Counties. Throughout this entire proceeding, up until the day before trial, ATXI was supporting a route far to the south through Moultrie County, a route which all of its testimony supports. It is reasonable to conclude that much of the public was duped by ATXI's conduct, and did not realize there was any reason to intervene to oppose ATXI.

The Commission has observed this very point in a prior case, where Ameren changed its position at the last minute, abandoning the route it had advanced throughout the proceeding (*Illinois Power Company dba Ameren Illinois Transmission Company, ICC docket 06-0706*). In its order of June 23, 2010 in that case, the Commission noted the statement of a witness that the community had been assured early on by Ameren that its preferred route would be chosen, only to later realize "the error in trusting these statements" (p.30). This underscores how unfair it is to tell the public throughout the proceeding that (a) you stand by your own carefully-developed route and (b) the intervenor's alternative route is not viable, but then stipulate to the opposite position on the eve of trial and claim nobody has come forward to oppose your newly stipulated position!

IV. The Commission Should Just Exclude this Segment from the CPCN.

As the ICC's own staff concludes in its brief (p.41), the Commission would be better served by simply excluding this segment from the CPCN than by approving ATXI's present recommendations.

In docket 06-0706, the Commission was required to reopen the case and re-evaluate the routing "because Petitioners entered into a stipulation, apparently for the short-sighted purpose of making its problem with Mr. Cruse's testimony 'go away'" (*Illinois Power Company dba Ameren Illinois Transmission Company, ICC docket 06-0706, Order of June 23, 2010, p.33*). Here, ATXI and MCPO entered into a stipulation the day before trial resulting in ATXI abandoning the route it had advanced throughout the proceeding for the purpose of making the objections to the Mt. Zion substation "go away." ATXI thus argues now for a different route than all of its testimony supports (see *Id.*, p.7, where the Commission noted that because of the stipulation, Ameren had to defend its current position against its own arguments from earlier in the proceeding). These circumstances "make it difficult for the Commission to evaluate siting criteria in the usual manner of separately presenting each party's position" (*Id.*, p.7).

ATXI suggests that its stipulation with MCPO "will serve the interests of administrative efficiency in that issues otherwise in dispute are resolved by agreement" (Stipulation Ex. 7, p.2). Yet what this Commission previously noted was that these last-minute, volte-face stipulations reflect that the Petitioner has done a poor job of evaluating the advantages and disadvantages of its route alternatives, and end up wasting a significant amount of resources for all parties (Order of June 23, 2010, p.33-34). The ALJs tried to avoid this earlier in this case, by asking ATXI to extend the time to more fully vet alternate routes, a suggestion ATXI rejected by arguing more

time was not needed because the alternate routes were “not viable” (ATXI brief filed May 7, p.7).
Now ATXI has changed its position and asks the Commission to approve one of those routes.
This is not in the public interest.

V. Conclusion

For the foregoing reasons, and those stated in PDM’s initial brief, the Commission should approve ATXI’s rebuttal recommended route for the Mt. Zion to Kansas segment, and reject the MCPO route and stipulation. Alternatively, the Commission should simply exclude this segment from the CPCN.

Respectfully submitted,

Coalition of Property Owners and Interested Parties in Piatt, Douglas, and Moultrie Counties (“PDM”),

By  _____
One of Its Attorneys

R. Kurt Wilke - 06190769
Brittany Kink Toigo - 06306334
Barber, Segatto, Hoffee, Wilke & Cate
831 E. Monroe, P.O. Box 79
Springfield, IL 62705-0079
(217) 544-4868
(217) 544-5225 - fax
wilke@barberlaw.com
bk@barberlaw.com
218969

CERTIFICATE OF SERVICE

The undersigned, an attorney licensed to practice in the State of Illinois, hereby certifies that a copy of the foregoing instrument was filed and electronically served upon the individuals identified in the Illinois Commerce Commission's official service list for Docket No. 12-0598 on the 10th day of June, 2013.


