

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

BRIEF ON EXCEPTIONS

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

PDM submits its Brief on Exceptions pursuant to Section 200.830 of the ICC's Rules of Practice, and raises the following three exceptions:

1. As a matter of law, the proposed order on the Mt. Zion to Kansas segment cannot meet the Commission's statutory "least cost" requirement because one of the segment's endpoints is undetermined.
2. As a matter of law, the proposed order is void because of due process violations.
3. (Alternative) If, despite the foregoing two arguments, the Commission nevertheless determines that a Mt. Zion to Kansas route should be selected on this record, the substantial weight of evidence supports ATXI's alternate route, not MCPO's route.

I. As a matter of law, the proposed order on the Mt. Zion to Kansas segment cannot meet the Commission's statutory "least cost" requirement because one of the segment's endpoints is undetermined.

The proposed order concludes at page 85 that a new substation in the Mt. Zion area is necessary but its location is "less certain." Therefore, the order states: "the Commission will not approve a particular location for a new Mt. Zion area substation at this time." Order, p. 85.

The proposed order then states, "the uncertainty surrounding the location of a new Mt. Zion substation does not prohibit the Commission from selecting a route for the 345 kV line from Mt. Zion to Kansas." Order, p. 85. The order states that the MZK Route (that is, MCPO's route) "warrants selection regardless of the ultimate location of the Mt. Zion substation." Id.

The order then recites the parties' evidence and arguments and concludes at p. 99: "the Commission finds the MZK Route to be the least cost route for the Mt. Zion to Kansas segment." However, because the Commission has declined to locate the Mt. Zion substation, the proposed order states that "the MZK Route is only approved from the existing Kansas substation west to the Macon County line." Order, p. 99.

PDM respectfully suggests the foregoing conclusion is both factually and legally wrong. Section 8-406.1 of the Public Utilities Act requires that the Commission find that a proposed project represents the "least cost means" of meeting its objectives. As the proposed order acknowledges, the Commission must determine which of the routes from Mt. Zion to Kansas is the least cost alternative. Such a determination is impossible when the length and precise locations of the route alternatives are unknown. These lengths and locations cannot possibly be known because the endpoint of the segment is unknown.

In selecting a route for the Mt. Zion to Kansas segment, the Commission is rejecting the advice of its own staff. As the proposed order notes on p. 97: “Since determining the Mt. Zion to Kansas routing depends upon the location of the new Mt. Zion substation, Staff also recommends that the Mt. Zion to Kansas segment be excluded from any certificate that the Commission grants in this proceeding.”

The Village of Mt. Zion, presumably very interested in the location of a Mt. Zion substation, proposed that the substation be moved 1.5 miles east and 2.5 miles south of the location proposed by ATXI (see, *Identification of Intervenor Alternative Route*, filed by Village of Mt. Zion on eDocket at 11:59 p.m. on December 31, 2012). For example, using Mt. Zion’s suggestion would dramatically alter the “least-cost” evaluation of the competing routes. As stated on page 97, “the Commission recognizes that the MZK Route is the longest of the three competing routes.” Indeed, the MZK Route already runs 4 miles north of ATXI’s proposed Mt. Zion substation to get the route up and over Moultrie County. Mt. Zion’s proposed location would add 2.5 more miles to the MZK Route, because the route would now have to detour 6.5 miles north to get up and over Moultrie County. Conversely, Mt. Zion’s proposed location is located on the ATXI route that runs south from Mt. Zion, so moving the substation south 2.5 miles would *reduce* the length of ATXI’s route by that amount. Therefore, relocation of the substation as Mt. Zion suggests would add at least *five miles* to the length differential - in favor of the ATXI route - between ATXI’s route and MCPO’s route. And comparison of these routes would then involve an entirely different analysis.

As the proposed order notes on p. 83, Staff concurs with the Village of Mt. Zion - that the substation should be moved further south. No one has suggested moving the substation north. Thus, on the present record, any movement of the substation is necessarily going to make the MZK Route

dramatically longer and more expensive than ATXI's routes, a critical point which the proposed order has failed to consider. Indeed, if Staff's suggestion is ultimately accepted, to move the substation "nearer a line between Pana and Kansas" (p. 83), the substation could ultimately be moved *12 miles* south of Mt. Zion.¹ In that event, the present approval of the MZK Route would result in a completely unnecessary detour to run the route as much as 16 miles north to attach it to the MZK Route at the Macon/Piatt border. This 32-mile north-then-back-south detour would be absurd. Approval of the MZK Route without knowing the location of the Mt. Zion substation endpoint is contrary to the Act's requirement to find the least cost means of routing the line to Kansas. The Commission should follow its Staff's advice and decline to approve a Mt. Zion to Kansas route until the Mt. Zion substation can be located.

Proposed Substitute Language

PDM proposes that the following portion of the proposed order be stricken: *From the beginning of the third full paragraph on page 85 (which begins, "Fortunately for ATXI . . ."), to the end of Section F on page 99.* In lieu thereof, PDM proposes the following language:

"In light of the Commission's conclusion not to approve a particular location for a new Mt. Zion area substation at this time, the Commission concurs with its Staff that it cannot properly evaluate competing route segments between Mt. Zion and Kansas, and will therefore decline to include as a portion of the Illinois Rivers Project authorization to construct a transmission line from Mt. Zion to Kansas."

¹ Staff has pointed out that the 345kV line can most efficiently be routed from Kincaid to Kansas, and the Mt. Zion substation should be located proximate to a line between those two points. Reference to a map shows that moving the Mt. Zion substation south to intersect a straight line between Kincaid and Kansas would place the substation 12 miles south of Mt. Zion.

II. As a matter of law, the proposed order is void because of due process violations.

The Channon Family Trust recently filed a petition to intervene in this proceeding, as it owns land over which the MZK Route directly passes, and the Trust did not receive proper notice of these proceedings. The Trust requests the Commission strike all proceedings in this matter insofar as the Mt. Zion to Kansas segment is concerned on the grounds that these proceedings meet neither the statutory nor common law due process requirements for adequate notice to all concerned parties.

The proposed order notes at the outset (page 7) that the expedited nature of this proceeding has resulted in “problems” and “errors” that have due process implications. One of those problems was a failure to notify all affected landowners: “[D]ue process required the Commission to extend the deadline to provide the newly notified landowners some semblance of an opportunity to respond.” Order, p. 7. Noting the hurried manner in which alternate routes were prepared, the order states that “the Commission has no assurance that as of yet unidentified shortcomings in these hastily developed routes will not later emerge if adopted under one of the stipulations.” Order, p. 8. ATXI abandoned its own carefully developed route and jumped on MCPO’s “hastily developed” route proposal the day before trial, and the proposed order adopts the MZK Route, to which ATXI has stipulated. The Commission’s prescient observation has now come true.

Section 10-25(a) of the Administrative Procedure Act states, “[i]n a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice.” *People ex rel. Illinois Commerce Commission v. Operator Communication, Inc.*, 281 Ill.App.3d 297, 300 (1st Dist. 1996), quoting 5 ILCS 100/10-25(a). “The statutory requirements of notice and opportunity to be heard are also necessary under principles of procedural due process . . . Administrative proceedings must conform to the requirements of due process of law. . . A decision in a contested case which does not

comply with the provisions of the Administrative Procedure Act is void.” *Id.* at 302-03.

PDM respectfully suggests the Commission simply decline to approve the Mt. Zion to Kansas segment so that it can be properly re-examined, not only after the location of the Mt. Zion substation has been determined, but also after all interested landowners have been properly notified. This would satisfy the due process concerns of both the Channon Family Trust and those in the PDM Coalition. PDM has previously pointed out their own legitimate due process concerns:

- the caption of this case doesn’t even include Piatt and Douglas Counties (and this caption is at the head of every communication from the ICC to landowners in this case),

- none of the public meetings presented any suggestion a route would extend into those counties,

- MCPO held no public meetings regarding their route,

- MCPO filed one route on the December 31 deadline and a different route several days later,

- MCPO’s filed route wasn’t a “route” but rather a 2-mile wide swath, which it didn’t refine into a route until it filed MCPO Corrected Ex. 2.2, months after the route submission deadline.

PDM also calls the Commission’s attention to the reply brief of the Illinois Farm Bureau which persuasively argues that the expedited statutory process itself - even aside from all the above specific due process concerns - does not comport with constitutional due process.

Proposed Substitute Language

PDM proposes that the following portion of the proposed order be stricken: *From the beginning of the third full paragraph on page 85 (which begins, “Fortunately for ATXI . . .”), to the end of Section F on page 99.* In lieu thereof, PDM proposes the following language:

“The Channon Family Trust and PDM have presented several due process arguments, including that the Channon Family Trust was not given notice of these proceedings until after the hearing, that the petition as filed did not contemplate any part of the transmission line extending into Piatt or Douglas Counties, that none of the public meetings held in this matter involved transmission lines being located in Piatt or Douglas Counties, and that the MCPO alternate route was not refined to a precise location until the intervenors’ direct testimony was filed in this case. The Commission finds that given these legitimate due process concerns, it cannot approve the MZK Route. The Commission will therefore decline to include as a portion of the Illinois Rivers Project authorization to construct a transmission line from Mt. Zion to Kansas.”

III. (Alternative) If, despite the foregoing two arguments, the Commission nevertheless determines that a Mt. Zion to Kansas route should be selected on this record, the substantial weight of evidence supports ATXI’s alternate route, not MCPO’s route.

PDM continues to assert that, based on ATXI’s proposed location for the Mt. Zion substation, the substantial weight of the evidence requires the adoption of ATXI’s alternate route to Kansas over MCPO’s route. But because the proposed order declines to approve any location for the Mt. Zion substation, PDM agrees with the ICC Staff that no route to Kansas can be properly evaluated or approved in the Commission’s order. However, if the Commission nevertheless determines a route should be selected on this record, the substantial weight of evidence supports ATXI’s alternate route over MCPO’s route (MZK), as argued extensively in PDM’s initial (“T”) and reply (“R”) briefs:

- MZK takes an unnecessary detour to the north (I p. 2-3).
- MZK is longer than ATXI’s alternate route (I p. 4).
- MZK is more expensive than ATXI’s alternate route (I p. 4-5, R p. 2).

- MZK has more severe turns than ATXI's alternate route (I p. 5, R p. 5).
- MZK was rejected by all of ATXI's witnesses (I p. 5-7, R p. 4-6).
- MZK is more costly to operate and maintain (I p. 8-9, R p. 4-5).
- MZK has more adverse environmental/historical impacts (I p. 9-10).
- MZK will interfere with the Tuscola airport (I p. 10-11).
- MZK indiscriminately splits farms (I p. 11-12, R p. 3-4).
- MZK violates the Department of Agriculture's Mitigation Agreement (I p. 11-12).
- MZK is unnecessarily close to the towns on US Rt. 36 (I p. 13-14).
- MZK is based on zero public input (I p. 14-16, R p. 6, 9).
- MZK ignores public preference for routing along roads (I p. 17, R p. 3-4, 7).
- MZK contravenes ATXI's policy against parallel transmission lines (I p. 8-9, R p. 7).
- MZK is inferior to ATXI's alternate route, according to the ICC Staff (I p. 5).

Proposed Substitute Language

PDM proposes that the following portion of the proposed order be stricken: *The third full paragraph on page 85 (which begins "Fortunately for ATXI . . .").* In lieu thereof, PDM proposes the following language:

"The Commission will now evaluate the three competing Mt. Zion to Kansas routes even though the location of the Mt. Zion substation is not yet known."

PDM also proposes that the following portion of the proposed order be stricken: *All of Section 7, beginning on page 97 through page 99.* In lieu thereof, PDM proposes the following language:

“7. Commission Conclusion.

MCPO’s route takes an unnecessary detour to the north of almost 4 miles even though Kansas is located 12 miles to the south of Mt. Zion. This was done, as the parties acknowledge, to locate the route outside of Moultrie County. However, the result is that the MCPO route (MZK) is longer than ATXI’s routes. ATXI’s alternate route is the shortest route - three miles shorter than the MZK Route. In addition, any movement of the Mt. Zion substation site to the south, as both the Village of Mt. Zion and Staff have proposed, will further lengthen the MZK Route in relation to ATXI’s routes.

The parties dispute whether Mr. Murbarger’s estimate of route cost for the MZK Route is based on the same analysis as his estimate of route cost for the ATXI routes, or is simply a mileage based estimate used to cost out all alternate routes. The Commission regards with suspicion ATXI and MCPO’s suggestion that the MZK Route, which is 3 miles longer, will cost less to construct than ATXI’s alternate route. What is not in dispute is that MCPO submitted into evidence an exhibit showing a base cost of \$129.1 million for the MZK Route, while ATXI submitted into evidence an exhibit showing a base cost of \$128.0 million for ATXI’s alternate route. Based on this evidence, the Commission finds ATXI’s alternate route is the least expensive to construct. In addition, any movement of the Mt. Zion substation site to the south, as has been proposed, will add to the cost of the MZK Route while reducing the cost of ATXI’s routes. Finally, the MZK Route will not only cost more to construct, it can be expected to cost more to maintain, as ATXI has testified parallel transmission lines can cause operational and maintenance problems. As ATXI states in its brief, it “prefers to avoid placing 345kV lines parallel to existing 138kV lines” (p. 45). Yet this is something the MZK Route does extensively.

While the environmental impact of the three routes are comparable, the MZK Route is within three miles of the town of Arthur, the heart of the historic Amish community, whereas ATXI's alternate route is more than six miles distant from Arthur.

*The predominant land use along the competing routes is farmland. Yet the impact of the transmission line through this agricultural area is significantly different because the MZK Route cuts through the middle of more than 27 miles of parcel after parcel of cultivated farmland, not following a road, a property line, or even a fence. MCPO's approach is not consistent with the case of *Ness v. ICC*, 67 Ill.2d 250, 253 (1977), which found the ICC erred in granting a certificate for a 345kV line where the route split affected farms. This is the overriding land use issue. The Commission also notes that adoption of the ATXI alternate route would resolve the legitimate concerns of both Mr. Reed and Mr. Hrupsa with regard to their airports.*

While it appears the MZK Route affects fewer residential and other structures, ATXI's public process has shown that preservation of agricultural uses are overwhelmingly the most sensitive factor in the public's mind, and the public overwhelmingly favors routing along roads, a preference that necessarily involves more residences. Indeed, the MZK Route accomplishes impacting fewer structures at the cost of running directly through the middle of large farm tracts, a routing decision which is disfavored by our courts, as noted above. None of the three alternatives has a significant negative impact on residences.

The Commission has noted at the outset of this order that the expedited nature of this proceeding has resulted in problems that have due process implications. Those problems are exacerbated here, where neither the petition, nor the public input process which preceded its filing, contemplated that the transmission line would be located in either Piatt or Douglas

Counties. Further, ATXI represented to this Commission and to the public at large until one day before trial that the MZK Route was not a viable route, which may well have dissuaded Piatt and Douglas landowners from intervening. As ATXI shows in its brief on p. 68, notwithstanding these deficiencies, there are many objectors to the MZK Route, and 36 persons, trusts and partnerships that comprise PDM. The other parties involved in this segment, as noted above, object to ATXI's primary route, not ATXI's alternate route. On this record, the Commission finds this factor weighs in support of ATXI's alternate route.

The degree of visual impact also favors ATXI's alternate route. While about 20% of the MZK Route parallels existing transmission lines, a 345kV line cannot be hidden no matter where it is located. ATXI's alternate route keeps the line away from populated areas, whereas the MZK Route would be visible from all of the towns along the US Rt. 36 corridor.

The presence of existing corridors is the final criterion addressed by the parties. Again, while the MZK Route parallels existing transmission lines, the record indicates this is not a preference in terms of operation and maintenance for ATXI, as noted above. ATXI's alternate route substantially outperforms MZK in adhering to roads and property lines. The 80% of the MZK Route which does not parallel transmission lines cuts directly through the middle of farm parcels, as noted above. This factor therefore favors ATXI's alternate route.

Upon consideration of all the criteria, the Commission finds ATXI's alternate route to be the least cost route for the Mt. Zion to Kansas segment of the Illinois Rivers Project. Because the location of the new Mt. Zion substation has not been approved, ATXI's alternate route is only approved from the existing Kansas substation west to the Macon County line. Stopping the line at the Macon County and Moultrie County border at this time will provide sufficient flexibility to

resume the line along an appropriate route once the location of the new Mt. Zion substation is identified. That portion of segment from the substation to the county border should be determined at the same time the substation location is determined."

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
220104

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 18th day of July, 2013.

