

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

PETITION FOR REHEARING

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

and

(Channon Family Trust)

PDM and the Channon Family Trust submit this joint Petition for Rehearing pursuant to Section 200.880 of the ICC's Rules of Practice, and raise three specific issues. Rehearing is required on the Mt. Zion to Kansas segment:

- (1) to afford Piatt and Douglas County landowners *minimum due process*,
- (2) to find the least cost route *only after* the Mt. Zion substation is located, and
- (3) to properly weigh the evidence, which *substantially favors* ATXI's route over MCPO's.

I. Landowners on the Mt. Zion to Kansas segment were denied due process.

Some Piatt and Douglas landowners did not receive notice from the Commission. The Order approves MCPO's alternate route from Mt. Zion to Kansas, designated as MZK. The Commission required MCPO to provide a list of all affected landowners on that route, along with their addresses, so the Commission could give them notice. MCPO provided that list, but it was defective. One of the defects was that MCPO failed to provide any address for the Channon Family Trust, which owns 340 acres in Douglas County. The Order approves the MZK route which runs directly across the Channon property (and makes two 90-degree turns on the Channon property). The Channons were never given any notice of this proceeding, never had the opportunity to timely intervene or participate, and only found out they were an affected landowner after the trial, when they received a letter from Ameren requesting to survey their property. The Channons immediately sought to intervene, but by then the hearing had already concluded.

All landowners on MZK were entitled to written notice from the Commission. 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. In order to meet due process requirements, the Commission required written notice to be given to all landowners on any proposed route.

Commissioner Del Valle's question to Judge Albers. At the August 14 bench session, Commissioner Del Valle expressed concerns about affected landowners not receiving notice. At that session, Judge Albers stated, "I believe that those who actually own the land upon which a route has been proposed got notice" (8/14/13 Bench Session Transcript, p. 13, l. 4-6). The Channon family *did not* get notice, and that fact is apparent on the record, because the landowner list MCPO filed shows no address for the Channons (see, Channon Petition to Intervene and Due Process Motion filed 7/15/13, Wiest Ex. D). Neither ATXI nor MCPO dispute that the Commission never mailed notice of this proceeding to the Channons, whose property is directly on the MCPO route.

Commissioner Scott's question to Judge Albers. At the August 14 bench session, Commissioner Scott asked about the public comments filed in the case. Judge Albers noted that many of the 243 public comments filed with the Commission were complaints from landowners who had not received notice. What Judge Albers did not mention was that well over 50% of all comments publicly filed in this proceeding are from Piatt and Douglas County residents. It should come as no surprise that when MCPO submitted a two-mile wide route without committing to a specific route location, that implicated thousands of landowners, many of whom have asserted in the public comments that they were missed. Some, like the Channons, ended up being directly on the route that MCPO ultimately selected. Judge Albers appears to have missed this point when he told the Commission that landowners "within a mile or so of the proposed route . . . wouldn't have gotten notice anyway" (8/14/13 Bench Session, p. 14, l. 23 to p. 15, l. 1). The Commission was required to give notice to *everyone* within MCPO's wide swath, because on January 7 when the Commission sent out its notice letter, MCPO had not committed to any specific route within that 2-mile wide path.

The Order acknowledges due process problems. The 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. It is inexplicable why the Commission, having determined these landowners on the Pana to Mt. Zion route were entitled to due process, has determined the Piatt and Douglas County landowners, who were similarly not notified, are not entitled to due process. Because no semblance of an opportunity to respond was given to these Piatt and Douglas County landowners, rehearing is required on the Mt. Zion to Kansas segment.

Not only were Piatt and Douglas landowners not given adequate notice, they were actively misled. On no other segment except for Mt. Zion to Kansas, would a resident have gone to an Ameren meeting, or looked at Ameren’s website, or checked out the ICC website, and have been informed that their county was not involved in this process. Yet Piatt and Douglas landowners who would have taken such steps were actively misled:

- 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). Even to this day, all references to the case caption list the 18 affected counties, but do not list Piatt or Douglas.

- None of the public meetings presented any suggestion a route would extend into Piatt or Douglas Counties. Indeed, the very first time project proponent ATXI ever asked the Commission to approve a route in Piatt and Douglas Counties was the *Friday before the hearing began*.

- MCPO held no public meetings regarding their route, yet the Commission has replaced 70 of the 330 miles of the entire project with routing that was *never publicized in any public meeting*.

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

- 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*. As a result, Piatt and Douglas County residents did not have any timely notice whether they were directly on the route, near the route, or 2 miles distant from the route. No other landowners in the entire project were burdened with this defect. What MCPO was allowed to do in this case is no different than a party filing 100 different alternate routes within a two-mile corridor, and telling the Commission it would decide later which one it wanted to pursue.

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. The Commission itself acknowledged during both the bench sessions of August 14 and August 20 that it opposed the expedited process for a project of this scope, noting such process "will almost certainly hinder local governments and property owners from forming effective intervention groups." (Bench Session of August 20, p. 10, l. 20-21).

II. The Order is fatally defective because it approved a Mt. Zion to Kansas route even though the Mt. Zion substation has not yet been located. It is elemental that a least-cost route cannot be determined without knowing its endpoints.

The Order states at page 85 that: "the Commission will not approve a particular location for a new Mt. Zion area substation at this time." Inexplicably, the 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 MZK (that is, MCPO’s route) “warrants selection regardless of the ultimate location of the Mt. Zion substation.” Id.

The Order 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 MZK Route is only approved from the existing Kansas substation west to the Macon County line.” Order, p. 99.

Selecting a route without knowing its endpoint is plain error. This conclusion is plain error, and if rehearing is not granted, will result in reversal of the Order. 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 competing route alternatives are unknown. These lengths and locations cannot possibly be known because one of the endpoints of this segment is unknown.

The Commission is rejecting the advice of its own Staff. In selecting a route for the Mt. Zion to Kansas segment, the Commission *rejects the advice of its own Staff*. See Order, 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 Commission recognized MZK was already the longest of the competing routes; moving the substation south will make MZK even longer. The Village of Mt. Zion 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). Mt. Zion's suggested location 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."

Mt. Zion's proposed location would add 2.5 more miles to MZK, 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 primary 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.

Staff concurs that the Mt. Zion substation needs to be moved south. As the Commission notes on p. 83 of the Order, 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 MZK dramatically longer and more expensive than ATXI's routes, a critical point which renders the Order fatally defective. 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

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.

In that event, the present approval of MZK would result in a completely unnecessary detour to run the route as much as 16 miles north to attach it to MZK at the Macon/Piatt border. This 32-mile north-then-back-south detour would be absurd.

Approval of MZK without knowing the location of the Mt. Zion substation endpoint is fundamentally at odds with 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 grant rehearing on the Mt. Zion to Kansas segment so that it can be considered along with, and in light of, the actual location for the Mt. Zion substation.

III. The substantial weight of evidence supports ATXI's route, not MCPO's.

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 (see preceding argument). But regardless whether the substation is located where ATXI proposed, or further south as other parties and Staff have proposed, the substantial weight of evidence supports ATXI's alternate route over MCPO's route (MZK), as argued extensively in PDM's initial ("I") and reply ("R") briefs:

- MZK takes an unnecessary detour to the north, running 4 miles north of the Mt. Zion substation location, *even though Kansas is located 12 miles to the south of Mt. Zion!* This was done for no reason other than to get the line out of Moultrie County. See also (I), p. 2-3.

- MZK is longer than ATXI's alternate route, *by three miles*, which no one disputes. As the Commission Staff notes (see its Brief on Exceptions filed July 18, p. 4), the shortest route is "almost certain to have the lowest baseline cost." See also (I), p. 4.

- MZK is more expensive than ATXI's alternate route. ATXI's routing expert testified that ATXI's alternate route was "least cost" taking "all factors into account." Staff witness Greg Rockrohr also testified "the ATXI alternate route would result in the lowest cost." See also (I), p. 4-5, and (R), p. 2.

- MZK has more of the very expensive severe turns than ATXI's alternate route, with 29 on MZK versus only 24 on ATXI's route. See (I), p. 5, and (R), p. 5.

- MZK was rejected by all of ATXI's witnesses. Donell Murphy testified MZK was "not viable." ATXI filed a brief as late as May 7, *just days before the hearing*, in which it argued MZK was "not viable." ATXI has never retracted any of this evidence and argument. See also (I), p. 5-7, and (R), p. 4-6.

- MZK is more costly to operate and maintain, because the extensive paralleling of transmission lines on MZK is "undesireable from an operations perspective" according to *ATXI's own witness*. See also (I), p. 8-9, and (R), p. 4-5.

- MZK has more adverse environmental/historical impacts. These include a native American site registered with the University of Illinois Archeological Survey, the well-known Amish community of Arthur, and forest areas in the Lake Fork River floodplain. See (I), p. 9-10.

- MZK will interfere with the Tuscola airport. MZK is located just 2070 feet south of the Tuscola airport runway, putting it "directly in the path of the airport's standard left-hand approach pattern." Even *MCPO's own witness* stated this was an issue "that would have to be worked around"

but it never was. See (I), p. 10-11.

- MZK indiscriminately splits farms. Indeed, MZK cuts 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, all directly contrary to the Supreme Court's admonition against splitting farms in *Ness v. ICC*, 67 Ill.2d 250, 253 (1977). See (I), p.11-12, and (R), p. 3-4.

- MZK violates the Department of Agriculture's Mitigation Agreement which is designed to minimize placement of transmission line poles on cropland. MZK places at least 16 dead-end turning structures right in the middle of farm parcels. See (I), p. 11-12.

- MZK is unnecessarily close to the towns on US Rt. 36, all of which are located either primarily or entirely to the north of the highway, where MZK runs. At the hearing, MCPO's routing expert could not even name most of these towns. MCPO's expert testified that he told his client a route within Moultrie County would be better. See (I), p. 13-14.

- MZK is based on zero public input. ATXI's *own witness* testified MZK "does not fairly reflect public input." There was not one single public meeting at which landowners were told a route in Piatt or Douglas Counties would be considered. As noted above, the case caption, the ICC website, and Ameren's project website are all misleading in that they suggest this project does not involve Piatt or Douglas Counties. See also (I), p. 14-16, and (R), p. 6, 9.

- MZK ignores public preference for routing along roads. ATXI's *own evidence* is that the public overwhelmingly favors routes to run along roads instead of across farms. See (I), p. 17, and (R), p. 3-4, 7.

- MZK contravenes ATXI's policy against parallel transmission lines. On this point, ATXI's hypocrisy is bewildering - ATXI criticized MCPO for triple-paralleling transmission lines

on another segment (see ATXI brief filed June 3, p. 57), but then stipulated to adopt MZK which has *15 miles of parallel lines, half of which are triple lines*. See (I), p. 8-9, and (R), p. 7.

● MZK is inferior to ATXI's alternate route, according to the ICC Staff. Staff witness Greg Rockrohr testified that "the ATXI alternate route would result in the lowest cost." See (I), p. 5.

ATXI's behavior in this case, *abandoning all of its own witnesses and evidence the day before trial*, and stipulating to a route which all of its own witnesses testified was not viable, has resulted in a perversion of the "open and transparent" process Ameren touts on the project website and in all of its public communications. It is one thing to stipulate to route adjustments based on intervenor evidence, but here ATXI abandoned both of its routes on an entire segment, just to avoid MCPO's objections to the Mt. Zion substation. This purpose had nothing to do with route selection. It is inconceivable that the Commission would allow a utility, on the eve of trial, to simply abandon all of its evidence on an entire route segment. As the Staff pointed out on page 3 of its Brief on Exceptions filed July 18, a stipulation should not be given any weight in the absence of substantial evidence supporting it, citing *Business and Professional People for the Public Interest v. ICC*, 136 Ill.2d 192, 555 N.E.2d 693 (1989). ATXI submitted *zero* evidence in support of the stipulation, because all of its evidence was submitted in support of its own routes.

Respectfully submitted,

Coalition of Property Owners and Interested Parties in Piatt, Douglas, and Moultrie Counties ("PDM"), and the Channon Family Trust,

By  _____
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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 September, 2013.


