

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY
OF ILLINOIS

Petition for Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 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
(Rehearing)

RESPONSE TO MOTION TO STRIKE

NOW COME the Channon Trust and PDM, by their attorneys, and the Village of Mt. Zion, by its attorneys, and in response to ATXI's Motion to Strike the direct testimony of Dan Long and Julie Miller, state that ATXI's motion should be denied for any one of six reasons:

1. ATXI has waived any objection to this testimony.

On September 13, as this rehearing process was getting underway, ATXI witness Jeffrey Hackman met with ICC Staff. An ex-parte communication memo regarding this contact was filed on September 24. ICC Staff reports that the purpose of this meeting was as follows: "*ATXI informed Staff regarding its plans to provide additional information about its substation needs when it seeks a rehearing.*" Mr. Hackman has now filed direct testimony, and concludes his testimony regarding

the Mt. Zion substation with this statement: “*I agree with the Commission that there is a need for the substation.*” (ATXI Ex. 2.0 (RH), p.26, l.567). ATXI, having filed direct testimony on rehearing as to its conclusion regarding the need for the substation, cannot now object to other parties’ contrary opinions.

2. The Channon Trust, in particular, is entitled to raise *any* issue in this proceeding.

The MZK route runs directly through the Channon property, making two 90-degree dead-end turns on their farm. As such, the Channon Trust is not some peripherally affected landowner - the Channon Trust is *the single most adversely affected landowner* on this segment. The Channons (who live in California) were not notified of this proceeding, and that fact was obvious on the face of the landowner list MCPO gave to the Commission for notice.¹

This rehearing proceeding is the Channon’s very first opportunity to raise *any* issue affecting their interests. Yet while MCPO was permitted to submit extensive direct testimony challenging the necessity of the Mt. Zion substation, ATXI now suggests the Channon Trust should not be allowed to do exactly what MCPO did. No argument can be made that the Channon Trust had a prior opportunity to submit this testimony. The Commission granted the Channon Trust’s due process petition for rehearing. At the August 14 bench session, the Commissioners specifically commented on the due process concerns that parties had raised. Granting ATXI’s motion to strike will simply resurrect the fatal due process errors that the Commission intended this rehearing to correct.

¹ MCPO’s landowner list shows the Channon Trust, but contains no address, even though the Channon Trust’s address in California has long been a matter of public record in the Douglas County Assessors office. See affidavit of Nancy Weist, filed July 15. ATXI either didn’t review MCPO’s list before adopting MCPO’s route, or didn’t inform the Commission that the MCPO list showed that the Channons had not been notified.

3. All testimony bearing on the substation and its location is relevant to the rehearing.

Dan Long and Julie Miller each offer testimony on *both* (a) the location of the Mt. Zion substation and (b) the necessity of having that substation certificated in this proceeding. The Mt. Zion substation was not certificated in the underlying proceeding - that has to be done, if at all, in this rehearing proceeding. All of the testimony which has been submitted is relevant to the certification of the Mt. Zion substation. ATXI suggests the Channons and PDM have no interest in the certification of the substation; yet ATXI never made that argument when MCPO submitted testimony of its expert that the Mt. Zion substation was not needed and should not be certificated.² The Channons and PDM are directly interested in this question, just as MCPO was, because the necessity and location of the Mt. Zion substation bear directly on the analysis of least-cost routing from Mt. Zion to Kansas.

The Commission did not certificate the Mt. Zion substation, nor the routing on either side, and left those issues for rehearing. ATXI cannot select portions of the prior order on the uncertificated segments that it wants to preserve on rehearing. Those questions must be all addressed on rehearing in order to support a decision by the Commission whether to certificate the Mt. Zion substation.

4. The Channon Trust and PDM have the right to submit direct testimony; there is no prejudice to ATXI in having Mt. Zion join in this submittal.

ATXI refers to Dan Long and Julie Miller as Mt. Zion's witnesses, but their direct testimony has also been submitted by Channon Trust and PDM. The Channon Trust and PDM were both

² See direct testimony of James R. Dauphinais, MCPO Ex. 1.0, p.44-69.

granted rehearing, and may both properly file direct testimony. Mt. Zion also wishes to submit on its own behalf the same testimony, and therefore joined in submitting this direct testimony. Alternatively, Mt. Zion could have adopted this testimony in rebuttal. But there is certainly no prejudice to ATXI in having Mt. Zion join in this direct testimony, as this simply alerts the parties to Mt. Zion's position earlier than if Mt. Zion had waited until rebuttal.

5. ATXI actively misled these parties in the underlying proceeding.

As PDM argued in its rehearing petition (which was granted), Piatt and Douglas county residents were reasonably misled by ATXI in the underlying proceeding. The caption of this case never included Piatt or Douglas Counties. None of public meetings ever presented any suggestion a route would extend into Piatt or Douglas Counties. And throughout the underlying proceeding, ATXI submitted all of its evidence in support of its own routes, arguing the MCPO northern route was not a viable option, up until the very last minute before trial, when ATXI suddenly abandoned its own routes and announced it had stipulated to the MCPO route.³

ATXI deceived the Village of Mt. Zion in the same way, suggesting to the Village that it would stipulate to move the substation south so as to resolve Mt. Zion's location concerns. Mt. Zion therefore reasonably believed it had no need to file testimony objecting to the need for or location of ATXI's proposed Mt. Zion substation. Mt. Zion believed it was conducting good faith negotiations with ATXI that would produce an outcome beneficial to Mt. Zion while reducing the financial burden to the Village of full participation in the case. Not until the day before trial, long

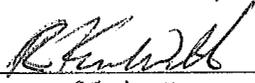
³ ATXI filed its joint motion to file and admit a stipulation between ATXI and MCPO on May 10, 2013, a Friday. Evidentiary hearing began the following Monday, on May 13, 2013.

after the opportunity had passed for Mt. Zion to submit testimony, did ATXI announce instead that it had stipulated with MCPO to keep the substation site where it was. Mt. Zion contends that while ATXI conducted these negotiations with the Village, it never had any intention of agreeing to a stipulation with Mt. Zion. In hindsight, it appears ATXI's purpose was to prevent Mt. Zion from submitting testimony to the Commission that ATXI felt would conflict with its position. ATXI has no equitable basis to move to strike this direct testimony now. And ATXI has certainly exhausted any credibility to argue other parties are "colluding to game the Commission's rules."

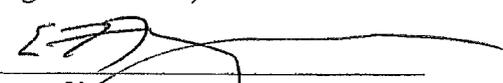
6. Time is short to consider matters only because ATXI has made it so.

ATXI suggests that the Commission has "much to do with little time to do it," and therefore shouldn't consider other parties' testimony on the need for or location of the Mt. Zion substation. It is instructive to review why there is much to do and little time to do it. First, ATXI elected to file this extensive project under the expedited process. When the ALJs reasonably requested ATXI to extend the time in the underlying proceeding, ATXI refused. Second, ATXI on the eve of trial abandoned its well-researched routes and stipulated instead to MCPO's hastily-crafted route, on which all landowners had not been properly notified. Being solely responsible for the fact that the Commission has much to do with little time to do it, ATXI should not be permitted to curtail legitimate issues other parties wish to raise, and have a right to raise, on rehearing.

Channon Trust and PDM,

By  _____
one of their attorneys

The Village of Mt. Zion,

By  _____
one of its attorneys

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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 26th day of November, 2013.

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