Attachment B

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS	)	
	)	
Petition for a Certificate of Public Convenience and	)	
Necessity, pursuant to Section 8-406.1 of the Illinois	)	Docket No. 12-0598
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.	)	

MOTION OF AMEREN TRANSMISSION COMPANY OF ILLINOIS
TO STRIKE THE DIRECT TESTIMONY ON REHEARING OF DAN LONG AND JULIE MILLER

The testimony of Mr. Dan Long (PDM–MZ Ex. 1.0) and Ms. Julie Miller (PDM-MZ Ex. 2.0) address topics that the Village of Mt. Zion could have raised in the underlying proceeding, but did not. Mt. Zion not only failed to file testimony in the original proceeding; it failed to file a post hearing brief, failed to appear at hearing, and failed to seek rehearing. Until now, Mt. Zion's participation in the proceeding has largely been limited to its filing a petition to intervene.

The problem with Mt. Zion's attempt to file testimony at this stage of the proceeding is two-fold. First, both witnesses seek to re-litigate issues the Commission has already decided and which were *not* the subject of any rehearing request. Ms. Miller alludes to "the harmful impacts faced by the Village oi the proposed ATXI substation and line are built." (PDM-MZ Ex. 2.0, p.3.) Mr. Long addresses the "need, or lack thereof, for a 345kv substation proposed to be located adjacent to Mt. Zion." (PDM-MZ Ex. 1.0, pp. 5-7, 17-24.) The Commission has determined that a Mt. Zion substation is needed. (Order, p. 86.) No party sought rehearing on this issue. Consequently, Mt. Zion cannot re-litigate this issue now.

The second problem with the testimony is related to the first. Since Mt. Zion did not actively participate in the proceeding below (despite ample opportunity to do so), the remaining issues addressed in its testimony were not addressed in the underlying proceeding. So whereas the substation issues are barred because those issues have been heard, decided and are not subject to rehearing, the remaining subjects addressed in the testimony are barred because they are being raised for the first time on rehearing and do not relate to any issue on which the Commission has granted rehearing. ATXI therefore seeks an order under 83 Ill. Adm. Code § 200.190 striking Mr. Long and Ms. Miller's testimony in their entirety.

ARGUMENT

1. The issue of whether a substation should be built in Mt. Zion is resolved.

The Commission's August 20, 2013 Order finds, without qualification, "that a new substation in the Mt. Zion area is necessary." (Order, p. 86.) The Commission also observed that the new substation will "include a 345/138 kV transformer; therefore, there will be at least one 138 kV transmission line emanating from the new Mt. Zion substation." *Id.*

Thus, while the exact location is an open question, whether a new substation is necessary near Mt. Zion is not. The Commission has found that a substation and connecting transmission lines are needed in this area.

2. With respect to the Mt. Zion area, rehearing is limited to the issues of where the Mt. Zion substation should be located and additional consideration of the least-cost route from Mt. Zion to Kansas.

Under the Commission's rules, "Applications for rehearing must state with specificity the issues for which rehearing is sought." 83 Ill. Adm. Code § 200.880(b). Thus, when rehearing is granted, the scope of the proceeding is limited to the issues for which rehearing is sought and granted. *See, e.g., Citizens Util. Bd.*, Dockets 00-0620/0621 (cons.), Order on Rehearing, 2002 Ill. PUC LEXIS 16, *1-2 (Jan. 3, 2002) (limiting scope of rehearing to three specific issues

raised in utility's petition); *Verizon North Inc.*, Dockets 00-0511/0512 (cons.), Order on Rehearing, 2001 Ill. PUC LEXIS 1039, *3-4, 11 (Nov. 29, 2001) (same).

ATXI sought rehearing on the issue of the substation location and to propose a route to connect the substation to the approved route. PDM/Channon sought rehearing "to find the least cost route *only after* the Mt. Zion substation is located." (PDM/Channon Joint Petition for Rehearing (Sept. 18, 2013), p. 1) (emphasis in original). No other party who sought rehearing addressed these issues.

There can be no dispute that Mt. Zion wants to re-litigate (after already having the opportunity to do so) the necessity of a substation anywhere near the village. The very intent of Ms. Miller's testimony is "to provide a clear understanding of the harmful impacts faced by the Village if the proposed ATXI substation and line are built." (PDM-MZ Ex. 2.0, p. 3.) As for Mr. Long, "my testimony will also address the need, or lack thereof, for a 345kv substation proposed to be located adjacent to Mt. Zion." (PDM-MZ Ex. 1.0, p. 5.) However, as just explained, the Commission has already determined that a substation is needed in the Mt. Zion area. Mt. Zion's testimony improperly seeks to re-litigate this issue and, on that basis, must be stricken.

3. The witnesses' remaining testimony is irrelevant and improper.

After discussing how a substation in Mt. Zion will allegedly interfere with the village, Ms. Miller goes on to discuss topics under the headings of "area economic deterioration," "water main investment," "additional economic impacts" and "industrial customer ties to the location of substation." (*See generally* PDM-MZ Ex. 2.0.) None of these topics were addressed in the underlying proceeding, because the village did not file testimony addressing them. Since the village did not bother to bring these issues to the Commission's attention in the underlying proceeding, it is barred from bringing them now.

Time-barred or not, the issues Mt. Zion seeks to raise are also irrelevant. "Evidence which is not relevant is not admissible." Ill. Evid. R. 402. "Evidence is relevant if it tends to prove a fact in controversy or render a matter in issue more or less probable." *In re A.W.*, 231 Ill. 2d 241, 256 (2008). The Commission's rules require exclusion of evidence that is "irrelevant, immaterial or unduly repetitious." 83 Ill. Adm. Code 200.610.

Page 5 of Ms. Miller's testimony contains two questions and answers about "economic deterioration" in the Decatur area. (PDM-MZ Ex. 2.0, p. 5.) The witness makes no attempt to connect this discussion to any outstanding issue concerning the location of the Mt. Zion substation. (This portion of the testimony suffers the additional problem that it relies on the hearsay testimony of Paula Cooley, whose testimony is *not* part of the record in this proceeding.) Pages 5 and 6 present a series of questions about a water main investment in Mt. Zion. (*Id.* at 5-6.) We are told the proposed transmission line would be "across the road" from the water main. (*Id.*) But we are not told why this would be a problem—or even if it is a problem. And again, there is no attempt to connect this discussion to any issue on rehearing. Page 6 also has a single question and answer about "additional economic impacts." (*Id.*) Here the witness discusses ADM's intended relocation and other goings-on around Mt. Zion. These topics are not relevant in any way to any of the issues on rehearing.

The last series of questions and answers starts at the bottom of page 6 and addresses "major changes" the witness speculates might be happening at a PPG plant. How or why this is relevant is again left unexplained.

Mr. Long's testimony suffers similar defects. At pages 7-17, for example, he discusses cost recovery issues and whether the "substations" (whether he is referring only to the Mt. Zion substation or all of the substations is never made clear) will be "used and useful." But a

certificate proceeding is not the proper forum for determining whether a utility's assets are "used and useful." Mr. Long himself concedes this point:

> Q. Is it your understanding that a proceeding such as this one is designed to allow cost recovery for the facilities addressed in the petition for a certificate?
>
> A. No. Cost recovery is not normally dealt with in determining whether a certificate should be issued.
>
> (PDM-MZ Ex. 1.0, p. 10:21-24.)

To be admissible, Mt. Zion's testimony must be "logically connected" to the issues on rehearing. As it pertains to the Mt. Zion area, the only issues for which rehearing was granted are where to place the substation and where to connect the remaining portion of the Mt. Zion to Kansas line. The testimony of Mr. Long and Ms. Miller is not germane to these issues and must therefore be stricken.

4. Mt. Zion's attempt to file testimony jointly with other parties does not cure the fatal defects of its testimony.

The Commission should find it curious that the heading of Mr. Long and Ms. Miller's testimony says it is filed not only on behalf of Mt. Zion, but also on behalf of PDM and Channon Trust. Nowhere do the witnesses explain what interest the Village has in common with these other parties. Indeed, with respect to Ms. Miller, neither PDM nor Channon Trust is mentioned in any question or answer. The record of this proceeding shows that Mt. Zion has not previously made any joint filings with PDM or Channon Trust.

Mt. Zion's attempt to now file joint testimony is plainly an instance of parties colluding to game the Commission's rules in order to circumvent the requirements for filing testimony, participation in hearings, and proper rehearing procedures. To allow the Commission's rules to be gamed in this manner is not only unfair and prejudicial to those parties that *do* follow the

rules; it undermines the very notion that parties with an interest in Commission proceedings raise their concerns before the Commission decides cases, not afterward.

CONCLUSION

The rehearing schedule places all parties (as well as the Commission) in the position of having much to do with little time to do it. The parties should not be forced to develop and file responsive testimony on issues that are plainly not properly within the scope of rehearing. ATXI respectfully requests that this motion be granted and that the direct testimony of Mr. Long and Ms. Miller be stricken.

Dated: November 21, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on November 21 2013, I caused a copy of the foregoing *Motion of Ameren Transmission Company of Illinois to Strike the Direct Testimony on Rehearing of Dan Long and Julie Miller* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant
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