

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF)
ILLINOIS)
)
Petition for an Order Pursuant to Section 8-509 of the) Docket 14-0522
Public Utilities Act Authorizing Use of Eminent)
Domain Power.)

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’
RESPONSE TO MOTION TO DISMISS**

Intervenors Derrold and Betty Jeanne Jones and Robert and Debra Hoewing (Intervenors) request that a final order not be issued in this matter until October 20, 2014 - ten days after the current deadline - or, in the alternative, that Ameren Transmission Company of Illinois’ (ATXI’s) Petition be dismissed in its entirety. The Intervenors’ requested relief is entirely unwarranted and is merely an improper attempt to harass ATXI during the preparation of its rebuttal testimony and to delay this matter unnecessarily. The Intervenors’ Motion should be denied.

I. BACKGROUND

On rehearing in Docket No. 12-0598, the Commission approved a route between Pana and Mt. Zion. *Ameren Transmission Co. of Ill.*, Docket No. 12-0598, Second Order on Rh’g at 49-50 (Feb. 20, 2014). This approved route was a hybrid of a route proposed by an intervenor in that case, which ran north from Pana towards Mt. Zion along Route 51, and a route proposed by Staff, which ran east from Route 51 towards Mt. Zion. *Id.* The Intervenors own adjacent parcels of property in Macon County, along the Pana to Mt. Zion route and nearly three miles from the intersection of the Staff and intervenor proposals (and the now-at-issue portion of the route near property owned by the Macon County Conservation District (MCCD)). (*See* ATXI Ex.

On August 26, 2014, ATXI filed a Petition initiating this docket, and included with its Petition and the accompanying testimony a map of the parcels that were, and are, the subject of the proceeding. (*See* Petition Exhibit A; ATXI Ex. 1.1.) On September 5, 2014, ATXI filed an errata that revised the map to correctly reflect the Pana to Mt. Zion route that the Commission approved in the limited area adjacent to property owned by MCCD. (*See* ATXI Errata, filed Sept. 5, 2014.) The route depicted on the revised map remains along the property line between the Intervenor's parcels, which, as stated above, are approximately three miles from the MCCD property. (*See* Pet. Ex. A (Rev.); ATXI Ex. 1.1 (Rev.).)

II. ARGUMENT

A. THE ERRATA DOES NOT ALTER THE DEADLINE FOR THE COMMISSION'S ORDER IN THIS PROCEEDING.

Intervenors argue that the filing of the errata constitutes an "amendment" and therefore that the "Petition herein was properly filed not on August 26, 2014, but instead on September 5, 2014." (Intervenors' Motion at 2.) Intervenors' Motion requests that as a result, "any final order herein should be entered within 45 days of September 5, 2014." (*Id.*) The Intervenor's Motion cites no legal basis whatsoever in support of its contention that the Petition was "not properly filed" until September 5. And even assuming *arguendo* that filing an errata to correct an exhibit to a petition constitutes an amendment of the petition, there is no basis in law for the Intervenor's position that an amendment to the Petition alters the deadline for Commission action in this case.

First, the correction contained in the errata does not alter the relief ATXI requests in this proceeding with respect to the Intervenor or any other primary landowners for that matter and, therefore, should not be considered an "amended petition." (Intervenors' Motion at 2.) Although the Intervenor's Motion might lead the casual reader to believe the corrected map reflects

impacts on their property different from those in the original map, this is not the case. The Intervenor's property is located approximately three miles from the "deviation" referred to in the testimony of Staff witness Mr. Rockrohr. (ICC Staff Ex. 1.0, p. 13; ATXI Pet. Ex. A.)

And regardless, even if deemed an amendment, amendments to pleadings are governed by the relation-back doctrine, which provides that "an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended." 735 ILCS 5/2-616(b); *see also Santiago v. E.W. Bliss Co.*, 2012 IL 111792 at ¶24. The purpose of the relation-back doctrine "is to preserve causes of action against loss due to technical pleading rules," and "allow the resolution of litigation on the merits and [] avoid elevating questions of form over substance." *Id.* at ¶25, *citing Boatmen's Nat'l Bank of Belleville v. Direct Lines, Inc.*, 167 Ill. 2d 88, 102 (1995).

Under the relation-back doctrine, "[a]t any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as a plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any manner, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought." 735 ILCS 5/2-616(a); *see also, generally, Santiago*, 2012 IL 111792 (holding that a complaint filed using plaintiff's fictitious name could be amended after expiration of the statute of limitations to use the plaintiff's legal name).

Here, ATXI filed an errata that corrected an exhibit to its Petition. Assuming the Intervenor's are correct that the errata "constitute[s] the filing of an amended petition" (Intervenor's Motion at 2), which ATXI does not concede, such an amendment does not alter the date on which the Petition is considered filed. Instead, under the relation-back doctrine, the

Petition should be considered filed on August 26, and properly amended (subject to the above argument) on September 5, 2014. To do anything else would “elevat[e] questions of form over substance” with respect to the Petition, in violation of the purpose of the relation-back doctrine. *Santiago*, 2012 IL 111792 at ¶25.

In conclusion, the correction contained in the errata does not constitute an amendment to ATXI’s Petition, but even an amendment to the Petition would not entitle the Intervenors to the relief they seek, because amendments to petitions “relate back to the date of the filing of the original pleading.” 735 ILCS 5/2-616(b). Instead, the deadline established by the Administrative Law Judge (ALJ) continues to apply. *See* 220 ILCS 5/8-509 (“If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.”).

B. THE INTERVENORS’ MOTION DOES NOT MEET THE STANDARD FOR A MOTION TO DISMISS.

The Intervenors’ Motion does not meet the legal standard for a motion to dismiss. Under Illinois law, a cause of action should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff (here, ATXI) to relief. *Pooh-Bah Enters. v. County of Cook*, 232 Ill. 2d 463, 465 (2009). When evaluating motions to dismiss, the facts presented in pleadings must be construed in the light most favorable to the non-moving party. *DiBenedetto v. Flora Township*, 153 Ill. 2d 66, 69-70 (1992); *Winfrey v. Chi. Park Dist.*, 274 Ill. App. 3d 939 (1st Dist. 1995).

Here, the most the Intervenors can say is that “a great deal of uncertainty exists as to what property will be necessary.” (Intervenors’ Motion at 5.) But the legal standard is not whether

“uncertainty exists,” it is whether there is *any* set of facts that would entitle ATXI to relief. As set forth in ATXI’s testimony, ATXI has engaged in reasonable negotiations with the Intervenors, in an attempt to acquire property owned by Intervenors and located along the route the Commission approved in Docket No. 12-0598. These facts, viewed in the light most favorable to ATXI, clearly indicate that ATXI’s Petition must survive any motion to dismiss. Intervenors’ Motion must be denied.

C. THE INTERVENORS’ MOTION IS AN IMPROPER ATTEMPT TO FORCE ATXI TO RESPOND TO STAFF’S TESTIMONY IN MOTIONS PRACTICE RATHER THAN IN REBUTTAL TESTIMONY.

Approximately two pages of Intervenors’ four-and-a-half-page Motion are devoted to recitation and direct quotations from the testimony of Staff witness Mr. Rockrohr. (Intervenors’ Motion, pp. 2-4.) Intervenors’ goal appears to be to force ATXI to address Staff’s testimony in response to this Motion, as well as in its rebuttal testimony. This tactic on the part of the Intervenors is prejudicial to ATXI and appears to be, at best, an effort to divert ATXI’s attention from its rebuttal filing and, at worst, simple harassment. It interferes with the orderly conduct of the proceeding and should not be condoned.

Like Staff, the Intervenors filed their rebuttal testimony on September 15, 2014. (*See* Jones Ex. 1.0; Robert F. Hoewing Ex. 1.0; Staff Ex. 1.0.) Neither Intervenors’ testimony mentioned or alluded to the issues raised in their Motion. (*See generally, id.*) If the Intervenors share Mr. Rockrohr’s concerns, the proper place to discuss those concerns was in their testimony.

Having failed to provide testimony on the matter, the Intervenors have attempted to adopt Mr. Rockrohr’s testimony by copying it wholesale into their Motion. But copying testimony wholesale into a motion does not transform the obligations of the responding party. Instead, the

only appropriate venue for a response to Staff's testimony is in ATXI's rebuttal testimony, which ATXI is in the process of preparing.

The ALJ has established a procedural schedule that requires ATXI to submit rebuttal testimony two days after the Intervenor's Motion was filed and approximately one day from today. That rebuttal testimony is the proper venue for a response to Staff's direct testimony, and Intervenor's attempt to force ATXI to respond in the interim is nothing more than harassment and an attempt to delay these proceedings unnecessarily. These tactics are not condoned by either the Illinois Supreme Court Rules or the Commission's Rules of Practice. *See* Ill. Sup. Ct. R. 137 ("The signature of an attorney ... constitutes a certificate by him that he has read the pleading, motion, or other document ... [and that it] is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation."). The ALJ is empowered to "ensure that hearings are conducted in a full, fair and impartial manner, that order is maintained and that unnecessary delay is avoided in the disposition of the proceedings," 83 Ill. Adm. Code 200.500(g), and may "take any action necessary to permit the orderly conduct of the hearing." 83 Ill. Adm. Code 200.590(b). Here, denial of the Intervenor's Motion is an appropriate means of ensuring the orderly conduct of the proceedings.

III. CONCLUSION

Intervenor's Motion lacks any basis in law and is procedurally improper. ATXI's Petition in this proceeding was properly filed on August 26, 2014. Even assuming that ATXI's errata "amended" the Petition, such an amendment relates back to the date the Petition was filed. Moreover, the Intervenor's Motion does not meet the legal standard for a motion to dismiss, and constitutes an improper attempt to harass ATXI during the preparation of its rebuttal testimony and to delay this matter unnecessarily. The Intervenor's Motion should be denied.

Dated: September 17, 2014

Respectfully submitted,

AMEREN TRANSMISSION COMPANY OF
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CERTIFICATE OF SERVICE

I, Eric Dearmont, hereby certify that a copy of the foregoing was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in Docket No. 14-0522 on September 17, 2014.

/s/ Eric Dearmont

Eric Dearmont