

2012 JAN 18 A 10: 54

No. 10-0711 CHIEF CLERK'S OFFICE

SOUTHERN ILLINOIS POWER )  
COOPERATIVE, an Illinois not-for-profit )  
Corporation and an electric cooperative, )  
For Authority to exercise the right of )  
eminent domain pursuant to 220 ILCS 30/13 )  
and 30/13.5 of the Electric Supplier Act )

**REPLY OF SOUTHERN ILLINOIS POWER COOPERATIVE (SIPC) TO THE**  
**RESPONSE OF FREDRIC BEASLEY AND CONNIE BEASLEY TO**  
**SIPC'S MOTION TO STRIKE DIRECT TESTIMONY**  
**OF FREDRIC BEASLEY AND CONNIE BEASLEY**

SOUTHERN ILLINOIS POWER COOPERATIVE, an Illinois not-for-profit corporation (SIPC), by its attorney GROSBOLL BECKER TICE, TIPPEY & BARR, Jerry Tice of counsel, and SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN, Ltd., Gary Brown of counsel, files herewith its response to the reply by Fredric Beasley and Connie Beasley by their attorneys, BYRON, CARLSON, PETRI & KALB, LLC, Brian R. Kalb of counsel, to SIPC's Motion to Strike the Prepared Direct Testimony filed on behalf of Fredric Beasley and the Prepared Direct Testimony filed on behalf of Connie Beasley in the above matter on or about November 10, 2011 and amended January 3, 2012 and in support thereof, states as follows:

I. BEASLEYS' RESPONSE TO SIPC'S MOTION TO STRIKE

The Beasleys' response to SIPC's Motion to Strike Testimony raises two points:

A. The testimony regarding the amount offered by SIPC for their easement and the location of the easement goes to SIPC's good faith in negotiations between SIPC and the Beasleys.

B. Beasleys' claim their testimony is not hearsay or if it is hearsay, it is admissible as an exception to the hearsay rule.

II. BEASLEYS' TESTIMONY REGARDING THE AMOUNT OF SIPC'S OFFER FOR THE EASEMENT AND THE PHYSICAL LOCATION OF THE EASEMENT.

Beasleys state that their testimony regarding the dollar amount of SIPC's original offer for an easement across their land and the dollar amount of SIPC's subsequent offer for an easement across their land at a different location is relevant because it shows SIPC has not acted in good faith citing Inter-State Water Co. v Adkins 307 Ill 356, 360 (1927). The decision in Inter-State is not applicable because it arose out of the condemnation proceeding at the circuit court where value of the land taken is actually established. The decision did not arise from an appeal of the order entered by the Illinois Commerce Commission which had found that it was necessary for the utility to exercise condemnation powers because the utility could not reach agreement with the landowner as to value. No explanation was provided in Beasleys' testimony regarding the purpose for offering into evidence the dollar amount of SIPC's offers. Beasleys made no effort to provide testimony regarding the value they may have placed on the easement or even if they provided a counter offer as to value. The implication from Beasley's testimony is that SIPC's offers for the easement are insufficient or that SIPC should not have changed the easement location. The Commission does not have authority to make a finding on either claim.

SIPC's supplemental prepared testimony of Michael D. Livesay filed September 9, 2011, SIPC Exhibit 3 and Exhibit G attached thereto, show that Beasleys have been contacted by SIPC representatives at least six times since the transmission line project commenced in late 2003. SIPC's latest appraisal and letter with the proposed easement value was provided to Beasleys on August 10, 2010. One other discussion between SIPC and Beasleys occurred on April 7, 2011, before SIPC filed its testimony. No agreement has been reached.

The issue in this proceeding is whether it is necessary for SIPC to proceed to

condemnation because SIPC and the landowner cannot reach agreement as to the value of the easement to be taken (220 ILCS 30/13). In that regard, the issue is whether SIPC has made contact with the landowner, made an offer for the easement, and whether further negotiations would be fruitless Cornbelt Electric Cooperative Petition Under Section 13 of the Electric Supplier Act No. 95-0652 (May 8, 1996). The Commission does not make any finding that the transmission line in this case is necessary (220 ILCS 30/13). Neither does the Commission determine value of the easement requested by SIPC across Beasleys' property nor does the Commission participate in negotiations between SIPC and Beasleys.

SIPC also moved to strike paragraphs 10, 11, and 12 because Beasleys offer testimony regarding the effect of the change in the easement and statements made by others as to the reasons for the easement location change. Because neither the value nor location of the easement are relevant in this docket, paragraphs 5 through 7 and 10 through 12 should be stricken.

III. BEASLEYS' CLAIM THE TESTIMONY IS NOT HEARSAY OR IF IT IS HEARSAY IT IS ADMISSIBLE AS AN EXCEPTION TO THE HEARSAY RULE.

SIPC also moved to strike paragraphs 5 through 7 of Beasleys' testimony because Beasleys have offered SIPC's appraisals, Exhibit A-1 to A-10 and B-1 to B-11, as Beasleys' exhibits to their testimony. The appraisals were not prepared by Beasleys but by a private appraiser commissioned by SIPC. SIPC has not offered the appraisals as evidence in this docket. Therefore, the appraisals are hearsay because they were prepared not by Beasleys but by a third person who has not presented any testimony in this docket. Beasleys' claim apparently that SIPC's appraisals are records of a type which are otherwise admissible as an exception to the hearsay rules. In this regard, Beasleys rely upon Metro Utility v Illinois Commerce Com'n 193 Ill App 2d 178; 549 NE2d 1327; 140 Ill Dec 455, 459-460 (2<sup>nd</sup> Dist 1990) where the court

approved the Commission's acceptance of a letter written by a staff member of the Environmental Protection Agency which letter was hearsay, but was relied upon by the appraiser in formulating his opinion as to value. In Metro Utility, the appraiser still had to appear and testify. Only the documentation used by the appraiser to support his appraisal was admissible as an exception to the hearsay rule.

However, even if the appraisals are admissible as an exception to the hearsay rule, a sufficient foundation must be laid by the witness as to the purpose of the exhibit and the accuracy of the same before it is admissible. Beasleys have made no attempt to meet their burden in that regard Grand Liquor Co v Department of Revenue 67 Ill 2d 195; 367 NE2d 1238; 10 Ill Dec 472, 476 (1977); Eastman v Department of Public Aid 178 Ill App 3d 993; 534 NE2d 458; 128 Ill Dec 276, 278, 280 (2<sup>nd</sup> Dist 1989).

Beasleys, in paragraph 10 to 11, offer testimony regarding oral statements to Beasleys by unnamed SIPC representatives as to why the easement location on Beasleys' property was changed and in paragraph 12 offer statements made to Beasleys by Doug Higgerson whose name does not appear in Beasleys' November 10, 2011 testimony regarding the use of Illinois Land of Lakes property. There is no question Beasleys' testimony regarding oral statements by others to the Beasleys offered as proof of such statements is hearsay. Beasleys offer no authority to allow admission of such hearsay as the only proof of such statements. Even in an administrative hearing, the fundamental hearsay rule is enforced where the sole proof of the evidence asserted to be true is hearsay unsupported by any other competent evidence Saal v County of Carroll 181 Ill App 3d 327; 536 NE2d 1299; 130 Ill Dec 88, 95 (2<sup>nd</sup> Dist 1989).

Beasleys claim the oral testimony of others in paragraphs 10 through 12 is admissible because the statements amount to admissions of a party. In the first place, the reasons for the

change in location of the easement, even if such are deemed admissible, are not relevant in this docket. But even if such statements are deemed relevant, the proper foundation for admission as an exception to the hearsay rule has not been made. Beasleys make no attempt to identify the SIPC representatives who made the oral statements or if they were authorized to do so. As to the oral statements of Doug Higginson, Beasleys make no attempt to establish who he is or who he was representing or what his authority was when making the oral statement that Illinois Land of Lakes is offering to sell a 600 acre tract. Neither do Beasleys explain how such a statement is an admission against the interest of SIPC. Oral statements by persons not otherwise authorized to make statements alleged to be against a party's interest are not admissible as an exception to the hearsay rule (Illinois Rules of Evidence 801(d)(2)(C) and (D)).

Beasleys claim the testimony in paragraph 13 that the Illinois Land of Lakes property is not being subdivided is based upon the observation of the Beasleys. However, there is no foundation provided regarding what or how the observation was made. There is only the conclusionary statement the property is not being subdivided. Neither do Beasleys explain the relevance to this docket of such statement.

Therefore, for the foregoing reasons, Southern Illinois Power Cooperative requests the following relief from the Administrative Law Judge and the Illinois Commerce Commission:

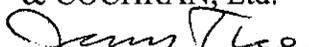
A. To strike Exhibits A-1 through A-10 and B-1 through B-11 and paragraphs 5 through 7 and 10 through 13 of the Direct Testimony of Fredric Beasley and Exhibits A-1 through A-10 and B-1 through B-11 and paragraphs 5 through 7 and 10 through 13 of the Direct Testimony of Connie Beasley as filed with this Commission on or about November 10, 2011 and amended January 3, 2012.

B. For such other and further relief as the Administrative Law Judge and/or the Illinois

Commerce Commission deems equitable.

Respectfully submitted,

SOUTHERN ILLINOIS POWER COOPERATIVE  
An Illinois not-for-profit Corporation and an  
electric cooperative,  
By GROSBOLL BECKER TICE TIPPEY & BARR  
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PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 17 day of January, 2012, I e-mailed a copy of the Reply of Southern Illinois Power Cooperative (SIPC) to the Response of Fredric Beasley and Connie Beasley to SIPC's Motion to Strike Direct Testimony of Fredric Beasley and Connie Beasley and attached hereto, addressed to the following persons at the e-mail addresses set opposite their names:

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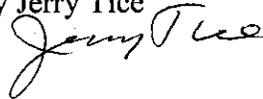
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