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ILLINOIS COMMERCE COMMISSION**

ORIGINAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SOUTHERN ILLINOIS POWER)
COOPERATIVE, an Illinois not-for-profit)
Corporation and an electric cooperative,) No. 10-0711
For Authority to exercise the right of)
eminent domain pursuant to 220 ILCS 30/13)
and 30/13.5 of the Electric Supplier Act)

ILLINOIS COMMERCE
COMMISSION
2012 MAR 26 1P 3:08
CHIEF CLERK'S OFFICE

MOTION TO QUASH ISSUANCE OF SUBPOENA DIRECTED TO JAMES OXFORD

SOUTHERN ILLINOIS POWER COOPERATIVE, an Illinois not-for-profit corporation (SIPC), by its attorneys GROSBOLL BECKER TICE, TIPPEY & BARR, Jerry Tice of counsel, and SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN, Ltd., Gary Brown of counsel, herewith files its Motion pursuant to 83 Illinois Administrative Code, Section 200.390 to quash the subpoena directed to James Oxford by Intervenors, Fredric Beasley and Connie Beasley through their counsel, Byron, Carlson, Petri & Kalb, Brian R. Kalb of counsel, and in support thereof, states as follows:

1. Commission discovery is governed solely by the Illinois Commerce Commission Rules, 83 Illinois Administrative Code, Section 200.340 through Section 200.420. Section 200.380 provides that subpoenas may only be issued pursuant to an order of the Administrative Law Judge or the Commission and then only upon a showing that such evidence sought by the subpoena cannot be reasonably obtained through informal discovery or by other means.

2. Notwithstanding the Commission Rules, Beasley have served a subpoena upon James Oxford requiring him to sit for an evidence deposition on March 30, 2012 without first obtaining the ALJ's order authorizing the same or without conferring the SIPC's counsel regarding the date, time, place or manner of taking such deposition. The unilateral setting of such deposition by Beasleys' counsel without a prior order of the ALJ authorizing the same or conferring with

SIPC's counsel regarding a mutually acceptable date, time, place or manner of taking such deposition violates the applicable Commission Rules, 83 Ill Adm Code Section 200.340, Section 200.380 and Section 200.350. As a result and should the ALJ authorize the taking of an evidence deposition of James Oxford, a different date, time and possible location of the deposition will have to be arranged due to SIPC's counsel's conflict with Beasleys' unilaterally chosen date, time and place for such deposition. Further, SIPC will not consent to the deposition of James Oxford being conducted by remote electronic means which is not specifically authorized by the Commission rules regarding depositions.

3. Fredric Beasley seeks to take the evidence deposition of James Oxford, a former employee of Southern Illinois Power Cooperative (SIPC) on the possibility that James Oxford may have evidence that Fredric Beasley provided a \$50,000.00 counter offer to SIPC's first proposal for a right-of-way across Beasleys' land for the SIPC transmission line. Beasleys have made no showing that such evidence is not otherwise available to them and Beasleys have failed to show that they have exercised due diligence in a timely manner to obtain such evidence prior to the evidentiary hearing as required by Commission rules 83 Illinois Administrative Code, Section 200.410.

4. Beasleys propose an evidence deposition of James Oxford without supervision and with no limitation on the subject matter of the evidence deposition. This will only lead to the exercise of discovery by Beasleys through their counsel when the time for discovery has long since passed in this docket and the evidentiary hearing has been held. To allow the exercise of discovery at this time will cause unjustifiable delay to SIPC in its efforts to obtain right-of-way for the transmission line which efforts commenced in late 2003. Such unjustifiable delay will be harmful to SIPC and its member cooperatives that are dependent upon the construction of such

line.

5. Beasleys state that the only purpose for the deposition is to determine if Fredric Beasley made a \$50,000.00 counter offer to James Oxford with respect to SIPC's first right-of-way proposal on the Beasleys' land. Beasleys claim that the information sought by the subpoena directed to James Oxford cannot be reasonably obtained through requests for information or other discovery. However, Beasleys state no reason why such information cannot be obtained or why such information is not already available to the Beasleys without requiring James Oxford to sit for such deposition. To the contrary, any information regarding the making of that counter offer is solely within Fredric Beasley's control, he being the person who claims to have uttered those spoken words. Thus, Fredric Beasley could have presented such evidence at the evidentiary hearing in this matter but chose not to do so. Accordingly, Beasleys have not satisfied the requirements of the Illinois Commerce Commission rules governing discovery by deposition of a third person such as James Oxford.

6. SIPC incorporates herein as additional support for its Motion to Quash Subpoena, SIPC's Response to Beasleys' Motion for Additional Proceedings and Issuance of a Subpoena to James Oxford.

WHEREFORE, Southern Illinois Power Cooperative requests the following relief:

A. To deny Beasley's Motion for issuance of a subpoena to require James Oxford to appear for an evidence deposition.

B. To quash any subpoena heretofore served on James Oxford to sit for an evidence deposition.

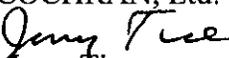
C. In the alternative, if the Administrative Law Judge deems it appropriate to order the issuance of a subpoena requiring James Oxford to sit for an evidence deposition, that the

Administrative Law Judge issue a protective order providing supervision of such procedure and providing for a mutually agreeable date, time and place for such deposition and limiting Beasleys' counsel to the single question, whether Fredric Beasley made a counter offer of \$50,000.00 and if made, allowing SIPC's counsel to question James Oxford regarding SIPC's response to such counter offer or in the alternative to require such testimony to be given in person before the Administrative Law Judge at the Illinois Commerce Commission by the appropriate individual, to wit: Fredric Beasley.

D. For such other relief as the Commission and Administrative Law Judge deem appropriate.

Respectfully submitted,

SOUTHERN ILLINOIS POWER COOPERATIVE
An Illinois not-for-profit Corporation and an
electric cooperative,
By GROSBOLL BECKER TICE TIPPEY & BARR
and SORLING, NORTHRUP, HANNA, CULLEN
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southernillinoispowerresponsetobesleyadditionalproceedingsrequest/jtelec

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 26th day of March, 2012, I e-mailed a copy of the MOTION TO QUASH ISSUANCE OF SUBPOENA DIRECTED TO JAMES OXFORD and attached hereto, addressed to the following persons at the e-mail addresses set opposite their names:

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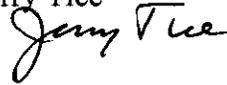
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