

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| AMEREN ILLINOIS COMPANY |) | |
| d/b/a Ameren Illinois |) | |
| |) | |
| Complainant, |) | |
| v. |) | No. 11-0375 |
| |) | |
| EGYPTIAN ELECTRIC |) | |
| COOPERATIVE ASSOCIATION |) | |
| |) | |
| Respondent. |) | |
| |) | |

**COMPLAINANT’S OPPOSITION TO APPLICATION FOR ISSUANCE
OF SUBPOENAS FOR DEPOSITION**

NOW COMES Complainant Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”), by and through its undersigned attorneys, and hereby requests that the Administrative Law Judge deny Respondent/Counter-Complainant, Egyptian Electric Cooperative Association’s (“EECA”) request that the Administrative Law Judge direct the Clerk to issue subpoenas for depositions of Linda Thoele and Jacqueline K. Voiles. In support, Ameren Illinois states the following:

1. On April 28, 2011, Ameren Illinois filed a complaint for exclusive service rights under the Electric Supplier Act (“ESA”) against EECA.
2. On or about May 13, 2011, EECA filed a Motion to Dismiss on the basis that Ameren Illinois received a proper Section 7 notice from EECA and Ameren Illinois did not file its complaint within 20 days of the date of notice, and therefore the Illinois Commerce Commission lacked jurisdiction.
3. On June 17, 2011, Ameren Illinois filed a Memorandum in Opposition to Respondent’s Motion to Dismiss. In that opposition, Ameren Illinois argued that EECA failed to

provide proper notice. Ameren Illinois noted that EECA failed to serve the local Illinois Ameren employee who regularly communicates with EECA on service rights issue and rather sent notice addressed to Ameren Illinois' registered agent, Jacqueline Voiles, in Springfield. However, the courier failed to deliver the notice to Jacqueline Voiles and instead handed the notice to an administrative assistant, Linda Thoele, who does not work for Ms. Voiles and does not recall receiving the notice. All of these facts were established in affidavits sworn to under oath by Ms. Voiles and Ms. Thoele and are not disputed by EECA.

4. After Ameren Illinois filed its Opposition, and before EECA filed its Reply, counsel for EECA indicated a desire to take the depositions of the Ameren Illinois witnesses that provided affidavits. Counsel for Ameren Illinois noted its objections at the time and EECA failed to pursue the matter.

5. On July 5, 2011, the Administrative Law Judge denied EECA's Motion to Dismiss. Now, nearly one year after the Administrative Law Judge concluded that EECA's attempt at service was insufficient, EECA seeks to depose Ms. Voiles and Ms. Thoele.

6. Ms. Voiles and Ms. Thoele possess no knowledge that is germane to the merits of this dispute. For a brief time, at the beginning of this process, their testimony was relevant to the limited and preliminary issue of whether EECA gave proper notice. They provided such testimony under oath and that issue has been decided in Ameren Illinois' favor. No further information, relevant to the merits of this dispute, can be gleaned from these witnesses. The facts pertinent to the resolution of the notice issue were before the Administrative Law Judge when he made his decision almost one year ago. EECA's attempt to reinject issues previously decided by the Administrative Law Judge would merely delay, unnecessarily, a resolution on the merits.

EECA has not made any showing that either Ms. Voiles or Ms. Thoele has any knowledge regarding the merits of this dispute.

7. Even if the question of notice remained alive, EECA's requests to depose Ms. Voiles and Ms. Thoele would be improper. EECA's fishing expedition should not be sanctioned as it would serve the sole purpose of allowing EECA's counsel to argue with the witnesses over their sworn testimony. *See, e.g., Davis v. G.N. Mortgage Corp.*, 396 F.3d 869, 885 (7th Cir. 2005) (affirming the trial court's refusal to allow depositions that "would be solely for purposes of casting doubt on the affiant's credibility and to reach the 'unlikely possibility' . . . [that] an adverse witness may contradict an earlier statement or volunteer an admission"); *United States v. On Leong Chinese Merchants Ass'n Building*, 918 F.2d 1289, 1294 (7th Cir. 1990). EECA's request lacks sufficient justification for submitting these individuals to unnecessary burdens—particularly on a tangential issue already settled by the Administrative Law Judge.

8. EECA states that it made a request of Ameren Illinois to produce Ms. Voiles and Ms. Thoele. EECA fails to mention that its request came at a time when their testimony was still arguably relevant—before the Administrative Law Judge denied its Motion to Dismiss. EECA's request in June 2011 suffered from the same infirmity it does now—deposing an affiant simply to argue about the content of an affidavit is simply improper. EECA's request is even further inappropriate at this stage due to the lack of relevance to the issues remaining in this case.

9. EECA's sole, sparse justification for requesting these depositions is that the duties and responsibilities of a corporation's agents and employees are relevant. While this may be true in the abstract sense, it is not relevant here. There may be a question, in some instances, what the duties and responsibilities were *of the person that received the notice*. It is undisputed that Ms. Voiles' did not receive the notice and therefore her duties and responsibilities are irrelevant.

Likewise information as to Ms. Thoele's duties are not relevant because she has provided an affidavit asserting that she has no recollection and, indeed, EECA has admitted that testimony surrounding Ms. Thoele's actual receipt of the notice is irrelevant. *See* Reply to Memorandum in Opposition to Motion to Dismiss, p.3 (stating that it is irrelevant whether Ms. Thoele remembers signing for this particular package).

10. For all of the reasons stated above, Ameren Illinois respectfully requests that the Administrative Law Judge deny EECA's request to direct the Clerk to issue subpoenas for depositions of Linda Thoele and Jacqueline K. Voiles.

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois

By /s/ Jeffrey R. Baron
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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing COMPLAINANT'S OPPOSITION TO APPLICATION FOR ISSUANCE OF SUBPOENAS FOR DEPOSITION was filed and served electronically, and served via regular mail, on this 24th day of May 2012, upon the below named parties:

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