

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Southern Illinois Power Cooperative)	
)	ICC No. 10-0711
Petition for Authority to Exercise the Right to)	
Eminent Domain pursuant to 220 ILCS 30/13 and)	
30/13.5 of the Electric Supplier Act)	

**APPLICATION FOR REHEARING OF
FREDRIC BEASLEY AND CONNIE BEASLEY**

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COME NOW Fredric Beasley and Connie Beasley ("collectively the "Beasleys"), by their attorney, and pursuant 83 Ill. Adm. Code § 200.880, and other applicable law, submit this Application for Rehearing (the "Application") with respect to the Illinois Commerce Commission's (the "Commission") final Order dated June 27, 2012 (the "Order") and issued on June 29, 2012.

INTRODUCTION AND SUMMARY

The Beasleys seek rehearing on four contested issues. These issues must be reheard not only because of their importance to the Beasleys, but also because of the significance of the errors made by the Commission. The Commission's findings, which resulted in granting SIPC's Petition to exercise eminent domain, will result in the Beasleys being denied the free and unfettered use of their property. While the Beasleys respectfully disagree with the Order in other respects, these issues stand out and should be addressed and corrected on rehearing.

1.) The credibility of both the Contact Log and Mr. Livesay's testimony: The Commission acknowledged in the Order that the Contact Log is not accurate. The Commission, nevertheless, found that the deficiencies in the Contact Log did not warrant the level of concern maintained by the Beasleys. SIPC bears the burden of proof to show the number of contacts with the Beasleys and the offers made to the Beasleys. Since the Contact Log and Mr. Livesay lacked credibility or reliability in this regard, the Commission should correct this error on rehearing and find SIPC did not meet its burden of proof because of the inconsistencies.

2.) SIPC's contacts with the Beasleys, as stated in the Contact Log, shows SIPC's lack of diligence in obtaining the right of way: SIPC also had the burden of proof to show that it

acted diligently in its negotiations with the Beasleys. The Contact Log suggests SIPC has been negotiating with the Beasleys since 2003, but SIPC has only had limited and sporadic contact since that time. Moreover, SIPC admitted that it never increased its initial offer to the Beasleys as SIPC originally stated in direct testimony. The Commission should correct this clear error and find that SIPC did not act diligently in its negotiations with the Beasleys.

3.) SIPC representative, Michael Livesay, testified that future negotiations would not be fruitless: The Commission concluded, based on Mr. Livesay's testimony, that future negotiations with property owners would be fruitless. As it relates to the Beasleys, however, Mr. Livesay opined that he believed he could negotiate a right-of-way with the Beasleys. Mr. Livesay's testimony in this regard is clear and unambiguous. The Commission should correct its error in this regard and find that future negotiations would not be fruitless.

4.) The Commission should allow SIPC representative, Jim Oxford, to testify on rehearing: The Order makes reference to the Beasleys questioning Mr. Livesay and Mr. Crain regarding a \$50,000.00 offer made by the Beasleys to SIPC for the right of way. Mr. Oxford was the only SIPC representative with personal knowledge of the initial contact(s) with the Beasleys. The Beasleys requested the Commission open the proceedings and/or allow rehearing to permit the testimony of Mr. James Oxford regarding Mr. Oxford's contact(s) with the Beasleys.

APPLICABLE LEGAL STANDARDS

Section 200.880(a) provides:

After issuance of an order on the merits by the Commission, a party may file an application for rehearing. The application shall state the reasons therefore and shall contain a brief statement of proposed additional evidence, if any, and an explanation why such evidence was not previously adduced. The application shall be filed within 30 days after service of the order on the party.

83. Ill. Adm. Code § 200.880(a). The statute further provides “[n]o appeal shall be allowed from any rule, regulation, order or decision of the Commission unless and until an application for rehearing thereof shall first have been filed with and finally disposed of by the Commission.” Id. at § 200.880(d).

ARGUMENT IN SUPPORT OF APPLICATION FOR REHEARING

The Commission’s findings regarding the (1) number of contacts between the Beasleys and SIPC, the (2) offers made by SIPC, and the (3) likelihood that further negotiations with the Beasleys would be fruitless is against the manifest weight of the evidence. After the Commission rehears the four contested issues set forth above, it is clear the Commission must change its Order the deny SIPC’s Petition as it relates to the Beasleys.

1. The Contact Log and Mr. Livesay’s testimony are not credible.

The Commission found that SIPC’s inaccurate Contact Log and inconsistent testimony regarding the same are not shortcomings calling into question the evidence supporting SIPC’s story regarding its contacts with the Beasleys. The Commission found the Contact Log credible despite Mr. Livesay’s testimony where he admitted that it was not accurate. In addition, the Commission found Mr. Livesay credible despite his inconsistent testimony. For example, Mr. Livesay reviewed the Contact Log on direct examination and was asked if he had any corrections to make to it. Mr. Livesay stated, “No, sir.” (Report of Proceedings, Livesay, pg. 154, ln. 3.) Mr. Livesay then testified to numerous additional contacts that predated the submission of the Contact Log to the Commission but were omitted from the Contact Log. The Commission admonished SIPC for its sloppy recordkeeping in the Order, but ultimately gave SIPC the benefit of the doubt and found Mr. Livesay’s testimony trustworthy. Such a conclusion begs the question, what is the purpose of the Contact Log or the proceedings if regardless of SIPC’s

failure to adhere to the most basic procedures, it will be allowed the power of eminent domain. As stated in their Opening Brief, Mr. Livesay's testimony is so inconsistent and the Contact Log is so poorly kept that the finder of fact cannot and should not trust the veracity of either.

The Commission found that the undersigned had taken testimony out of context and had either confused or misrepresented which SIPC employees were involved in communications with the Beasleys. The Commission stated in the Order that the Beasleys' attorney attempted to draw into question when SIPC made first contact with the Beasleys. The Commission cites to page 9 of the Opening Brief. The Beasleys are unclear on what the Commission is referencing. The Beasleys included a table on page 9, highlighting the differences between the Contact Log and Mr. Livesay's testimony regarding his contacts with the Beasleys. Mr. Livesay reviewed the Contact Log and stated that it was correct, and then proceeded to testify to at least five contacts that were not included on the Contact Log. Indeed, on page 8 of the Opening Brief, the Beasleys made clear that the table was being used to show the inconsistencies between the Contact Log and Livesay's testimony. The table specifically outlines Mr. Livesay's contacts with the Beasleys regarding each of the proposals. Any other inference that the Commission derived from the table or the argument on page 9 is inaccurate. If Mr. Livesay had additional contact with the Beasleys before 2010 that is not included on the table it only highlights the inconsistencies of SIPC's evidence.

The Order states that the "fact" that more contacts occurred than reflected in the Contact Log limits the usefulness of the Contact Log, "but does not mean that those contacts listed in the Contact Log did not occur or suggest insufficient contacts overall were made." (Order, pg. 8.) The Beasleys agree with the Commission in its conclusion that the usefulness of the Contact Log is limited. If the Contact Log is of limited usefulness, then it is of limited credibility. If the

Contact Log is of limited credibility, then a reasonable person cannot assume that the contacts referenced in the Contact Log occurred. Indeed, the person with personal knowledge (Mr. Oxford) regarding most of the contacts listed in the Contact Log did not testify.

The Order references that the Beasleys rely on the Contact Log to support its argument that SIPC lacked diligence in its negotiations with the Beasleys. Since the Contact Log is the only source of evidence offered by SIPC to address the contacts between SIPC and the Beasleys, it is the only evidence that SIPC may rely upon to show it acted with diligence. SIPC's own evidence belies such an argument, and is evidence of a lack of diligence. The Beasleys only point to the Contact Log to show that there is no evidence of SIPC's diligence to negotiate with the Beasleys, but not to show that it is accurate. As stated above, it is SIPC's burden to present evidence showing that it acted with diligence. The Beasleys contend that the Contact Log is not sufficient to support SIPC's claim.

2. SIPC's contacts with the Beasleys show SIPC's lack of diligence and were not meaningful.

SIPC frequently argues that it has been negotiating with the Beasleys for nearly ten years. The issue of how long SIPC has been negotiating with the Beasleys is indeed relevant, but it is a fact that cuts in favor of the Beasleys. The Commission may look at the nature and scope of the negotiations process to determine whether or not the negotiations had been undertaken in a reasonable and diligent manner. In re Consolidated Tel. Co., supra. The Contact Log states that there were some initial conversations with the Beasleys in 2003, in which the Beasleys informed James Oxford that they did not want the power line to cross their property. For some unknown reason, SIPC did not make further contact with the Beasleys until nine months later, when the Beasleys agreed to cooperate with Oxford to "help [SIPC] find a way [for the transmission line]. (See the Contact Log.) In February 2005, Fredric Beasley showed "Mike and Jim the way [for a

transmission line].” After nearly a year of absolutely no activity on SIPC’s part, the Contact Log states that in January 2006, Beasley agreed to have SIPC get an appraisal of the Beasley Property, and in August 2010, SIPC provided the Beasleys an appraisal for the First Proposal. Nearly eight months later, however, SIPC informed the Beasleys that SIPC was changing the route of the transmission lines and submitted another appraisal. Between October 2011 and March 2012, SIPC met with the Beasleys and discussed yet another proposal for the transmission line. (Report of Proceedings, Livesay, p. 185, lns 10-13.) SIPC did not provide the Beasleys an offer, however, regarding the Third Proposal. As the contacts between the Beasleys and SIPC make clear, SIPC did not act diligently in negotiating with the Beasleys and made only sporadic contact with the Beasleys in order to negotiate the easement. The Contact Log shows that the Beasleys cooperated throughout the process in showing SIPC “the way” for the transmission line and agreeing to have SIPC obtain an appraisal of the property. It took SIPC eight months between the time the Beasleys agreed to have SIPC appraise the property and the time SIPC gave the Beasleys an appraisal. Since SIPC has sat on its hand for long period of time throughout the negotiation process and has not acted diligently, the Commission should conduct a rehearing on the issue.

Livesay conveniently testified for SIPC that after it submitted appraisals to landowners, SIPC increased its initial offer and increased the additional proposal for settlement to the land owners. (Livesay Direct Testimony, p. 11, lns. 5-7.) SIPC submitted the testimony in an attempt to bolster the argument that it has had numerous contacts with the Beasleys regarding price. The statement is incorrect. SIPC made no such increases in the initial offer to the Beasleys. The Contact Log reveals no such communications, and Livesay recanted his testimony upon further examination. Livesay testified on cross-examination:

"Q: And if I understand correctly, you would agree that you have never made an increase in the offer to the Beasleys from the initial proposal?

A: Yeah. To the best of my knowledge, yeah. What we have offered was the appraisal amount and a per pole amount. And at this time I don't know what the per pole amount was."

(Report of Proceedings, Livesay, p. 211, lns. 2-8.)

Livesay further recanted his testimony regarding an increase from the initial offer relating to the Second Proposal. Livesay testified:

"Q: Is it then fair to say that the only compensation amount that was discussed between SIPC and Mr. Fredric Beasley regarding this second proposed route, the \$25,200 proposed amount that you put in your Exhibit F, Revised Exhibit F to your supplemental prepared direct testimony, is that the only dollar amount that was discussed?

A: Yes, yes."

(Id. at 195, lns. 15-22.)

Livesay said that SIPC increased its offer in his direct testimony, but said the exact opposite on cross-examination and on re-direct examination. Mr. Livesay's testimony does not satisfy SIPC's burden that it had meaningful contacts with the Beasleys, and the Commission should allow rehearing on the issue.

3. SIPC Representative, Michael Livesay, testified that future negotiations would not be fruitless.

The Commission concluded that future negotiations with the Beasleys would be fruitless. The Order states that when the entire record is reviewed, the Commission is not persuaded that SIPC expects future negotiations to be fruitful. This is simply another example where SIPC presented inconsistent evidence. For example, Mr. Livesay testified on direct examination that he did "not believe that continued negotiations [would] prove successful in [allowing SIPC] to voluntarily obtain the necessary easement rights required for the proposed transmission line."

(Livesay Direct Test., pg. 15, lns 2-4.) Yet, on cross examination, Mr. Livesay gave a different response:

“Q: Do you have an opinion, Mr. Livesay, based upon your experience in dealing with Mr. Beasley here, whether or not further negotiations you will be able to obtain a signed easement from Mr. Beasley?”

A: Yes, I will.”

To overcome the clear import of this testimony, the Commission scrutinized the phrasing of the Beasleys’ attorney’s question. The Beasleys submit to the Commission that the above question is unambiguous and the context is clear. As stated above, Mr. Livesay may have given inconsistent testimony regarding his belief that future negotiations would be fruitless, but in response to the above question, Mr. Livesay opined that “I will” be able to obtain a signed easement from Mr. Beasley.

4. The Commission should consider the evidence of Mr. James Oxford.

The Beasleys request the Commission allow for rehearing to allow the testimony of SIPC representative, Mr. James Oxford. The Beasleys petitioned the Administrative Law Judge on March 16, 2012 (the “Petition”) to reopen proceedings to allow Mr. Oxford to testify in the case. The Administrative Law Judge denied the Petition on March 19, 2012. The Beasleys requested an interlocutory review of the Administrative Law Judge’s decision on March 30, 2012, which was denied on April 18, 2012. Had the Commission allowed Mr. Oxford to testify in these proceedings, the Beasleys believe he would have testified regarding the dealings between SIPC and the Beasleys. Mr. Oxford would have been able to testify as to the accuracy or inaccuracy of the Contact Log. Indeed, Mr. Oxford is the only SIPC representative with personal knowledge regarding the early contacts between SIPC and Beasleys. Notably, SIPC did not call Mr. Oxford

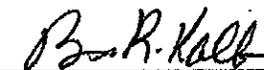
to testify in these proceedings. The Beasleys request the Commission open the proceedings for the purpose of taking the testimony of Mr. James Oxford.

CONCLUSION

The Beasleys respectfully request rehearing on the four issues discussed above because the Commission committed error in ruling on them. Upon rehearing of these four issues, the Commission should make a finding that SIPC did not meet its burden of proof under the Corn Belt Electric Cooperative factors. The Commission should deny SIPC's Petition as it relates to the Beasleys' property.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent via electronic mail, to the parties listed below on this 20th day of July, 2012.

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