

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF ILLINOIS)
)
Petition for a Certificate of Public Convenience and)
Necessity, pursuant to Section 8-406.1 of the Illinois)
Public Utilities Act, and an Order pursuant to Section 8-) Docket No. 12-0598
503 of the Public Utilities Act, to Construct, Operate and)
Maintain a New High Voltage Electric Service Line and)
Related Facilities in the Counties of Adams, Pike,)
Brown, Schuyler, Cass, Fulton, Morgan, Sangamon,)
Shelby, Montgomery, Christian, Scott, Moultrie, Macon,)
Coles, Clark, Edgar and Champaign, Illinois.)
)

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’ MOTION FOR A
PROTECTIVE ORDER**

Ameren Transmission Company of Illinois Company (ATXI or the Company), pursuant to Section 220 ILCS 5/4-404 of the Public Utilities Act (the Act) and 83 Ill. Admin. Code § 200.430, hereby moves for entry of a protective order to govern the procedure for the designation, production, and treatment by receiving parties of commercially sensitive, confidential and proprietary information. In support of this motion, ATXI states:

1. On November 7, 2012, ATXI filed its Petition for a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Act, 220 ILCS 5/8-406.1, and an order pursuant to Section 8-503, 220 ILCS 5/8-503, to construct, operate and maintain a new 345,000 volt electric line and related facilities in Adams, Pike, Brown, Schuyler, Cass, Fulton, Morgan, Sangamon, Shelby, Montgomery, Christian, Scott, Moultrie, Macon, Coles, Clark, Edgar and Champaign County, Illinois.

2. ATXI anticipates that during the course of this proceeding, parties will request of each other the production and disclosure of commercially sensitive, confidential, and proprietary information (Confidential Information).

3. Section 4-404 of the Act states: "The Commission shall provide adequate protection for confidential and proprietary information furnished, delivered or filed by any person, corporation or other entity." 220 ILCS 5/4-404. To that end, Section 200.430 of the Commission's Rules of Practice authorizes the Commission and its Administrative Law Judges to enter protective orders "to protect the confidential, proprietary or trade secret nature of any data, information or studies." 83 Ill. Adm. Code § 200.430(a).

4. Additionally, Section 7(g) of the Illinois Freedom of Information Act exempts from public disclosure "trade secrets and commercial or financial information . . . where the trade secrets or information are proprietary, privileged or confidential." 5 ILCS 140/7(g).

5. Accordingly, ATXI requests entry of the attached Protective Order. The Protective Order establishes procedures for designation and production of Confidential Information, including procedures governing electronic filing, in accordance with 83 Ill. Admin. Code § 200.1000, *et seq.*

6. The Protective Order provides that parties electronically file documents in both public and proprietary versions. This will assure that the proprietary version will not be posted electronically on the Commission's e-Docket. Given the commercially sensitive, confidential and proprietary information that will be submitted or may be sought in this proceeding, the procedures outlined in the Protective Order are reasonable, necessary and appropriate.

WHEREFORE, for the reasons set forth above, ATXI respectfully requests entry and approval of the attached Protective Order.

Dated: November 15, 2012

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

One of their Attorneys

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on November 15, 2012, I caused a copy of the foregoing Motion for a Protective Order to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant _____
Attorney for Ameren Transmission Company of Illinois

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PROTECTIVE ORDER

In the course of this proceeding, the parties and their attorneys may receive certain confidential information by way of documents, testimony, and answers to discovery requests, and through informal discussion or through another method of recording or transmitting information, including but not limited to any electronic communication, e-mail or other computer-related communication. To protect against the inappropriate use or disclosure of such information and materials and to facilitate and simplify disclosure in this case, the Administrative Law Judges (ALJs), pursuant to Sections 4-404 and 5-108 of the Public Utilities Act (Act) and 83 Ill. Admin. Code 200.430, hereby order that the designation and production of Confidential Information (as defined herein) comply with the terms of this Protective Order. Parties designating information “confidential” shall bear the burden of demonstrating that such information is entitled to confidential treatment.

• **Confidential Information Defined**

1. “Confidential” as used herein means non-public information maintained by a party in confidence in the ordinary course of business (and which such party seeks to maintain in

confidence) and that falls into one or more of the following descriptive categories:

- a. trade secrets and commercial or financial information obtained from a person or business where the trade secrets or information are proprietary or privileged, or where disclosure of the trade secrets or information is likely to cause competitive harm;
- b. materials concerning critical infrastructure, the disclosure of which could adversely affect public safety and/or security, or other information designated as critical infrastructure information;
- c. private personnel or other personal information, except for executive compensation already disclosed in Securities and Exchange Commission filings;
- d. information regarding the status and terms of negotiations for acquisition of rights of way or other property interests;
- e. categories of documents and information as are recognized as confidential under applicable law, by ruling of the ALJs, or by order of the Commission in this proceeding; and
- f. information required to be maintained as confidential in accordance with the terms of applicable licenses or agreements.

Nothing shall be considered confidential if it is viewable from public locations, has been publicly disclosed previously, or is lawfully received from other sources.

• Process for Designating Information “Confidential”

2. Where any Party believes in good faith that a specific document that it will produce contains information that is entitled to protection as confidential under the law, that Party (Producing Party) shall identify such information by conspicuously marking it “Confidential”, signifying that the Producing Party has in good faith made a legal and factual determination that the information is as described. The Producing Party shall distinguish confidential information from non-confidential information appearing in the same document, in a manner consistent with Section 200.605. Each specific document so marked or specific information so identified will be referred to hereafter as “Confidential Information.”

3. Where any Producing Party believes in good faith that specific information it will

convey orally includes information that is entitled to protected treatment under the law, that Producing Party shall identify such information by stating that it is “Confidential”, signifying that the Producing Party has made a legal and factual determination that confidential information will be, or has been, conveyed. The Producing Party shall also within three business days of any such oral communication, advise the recipients thereof in writing, that “Confidential” information was conveyed. Information so designated shall be treated as Confidential Information unless and until a contrary ruling is made by the ALJs or the Commission determine otherwise.

- **Treatment of Confidential Information**

4. Commission officers and employees, including Staff witnesses, are governed by Sections 4-404 and 5-108 of the Act and Sections 200.430, 200.605 and 200.1050 of Part 200 regarding the disclosure of confidential information or documents. Other than as set forth in the preceding sentence, Commission officers and employees, including Staff witnesses, are not subject to the provisions of this document, including, but not limited to, the provisions set forth in Paragraphs 6, 7, and 14.

5. The Office of the Attorney General is governed by the Attorney General Act, 15 ILCS 205/0.01 *et seq.*, and to the extent this office is a party, will receive information in this proceeding on behalf of the People of the State of Illinois. The office of the Attorney General shall treat Confidential Information in accordance with the terms of this document and shall file and distribute pleadings or testimony in accordance with the terms contained herein.

6. Subject to rights to challenge Confidential designations made by a Producing Party described herein, neither information that is produced and designated as “Confidential” nor any information contained therein or obtained there from shall be delivered, exhibited or

disclosed to any person (other than Commission officers and employees, including Staff witnesses) who has not read this order, signed Form 1 attached hereto, and delivered Form 1 to the Producing Party.

7. Persons who comply with Paragraph 6 above shall use or disclose the Confidential Information only in preparation for and conduct of this proceeding, and then solely as provided in this document, and shall take all reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this document. This includes appropriate precautions to prevent the unauthorized transfer of information in any type of electronic format. All Confidential Information produced or exchanged in the course of this proceeding shall be used solely for the purpose of this proceeding or any appeal arising there from.

8. Parties may make Confidential Information available only to those who need access to the information to prepare for this proceeding and who have executed the attached Form 1 as provided in Paragraph 6 above. Parties may make copies of Confidential Information only after notifying the Producing Party of the identity of each person to whom a copy will be disseminated. This includes the dissemination of information in an electronic format, including, but not limited to, e-mail transmission or other means of electronic sharing, such as placing electronic documents on a shared-access network.

9. If a party inadvertently produces Confidential Information not marked as such and the Producing Party subsequently notifies the recipient (and confirms in writing) that such information is Confidential Information, the receiving party will treat such information as identified by the Producing Party in accordance with the terms contained herein and will use its best efforts to recall or retrieve any such information that has been distributed not in accordance

with said terms. This paragraph does not waive the receiving party's right under this order to challenge subsequently such designation on its merits under Paragraph 15 of this order.

10. In the event that any party seeks to use or uses any Confidential Information in testimony, exhibits, discovery responses, cross-examination, briefs or other documents to be filed in this case, the following shall apply:

- a. The testimony, exhibits, discovery responses, cross-examination, briefs or other documents containing Confidential Information shall be sealed and served only on the Commission and the attorneys and witnesses of parties who have signed the confidentiality agreement and have been granted access to the Confidential Information pursuant to this document. This includes, but is not limited to, the service of documents in electronic formats (such attorneys may distribute Confidential Information so received as provided herein).
- b. The pages containing Confidential Information shall be clearly marked and the cover of the testimony or other documents shall indicate that Confidential Information is contained within the document inside. In the case of electronic data or documents, such designation shall be made by including "Confidential" in the name of the file containing Confidential Information and in the label of the media containing such electronic data.
- c. All Confidential Information shall be redacted from the copies of such testimony, exhibits, discovery responses, briefs or other documents including electronic documents and e-mail that may be provided to individuals and their attorneys who are not granted access pursuant to this document.
- d. When a party seeks to file, either electronically or in paper form, a document containing Confidential Information, it must file a public redacted version of such document for public viewing and an unredacted confidential version with the Commission in accordance with Section 200.430(d) of Part 200. If a document contains both public information and Confidential Information, only the specific portions of the document considered confidential by the Producing Party shall be redacted from the public version of the document. If the filing is made electronically via the e-Docket system, the public and confidential versions shall be served in accordance with Section 200.1050(b) of Part 200.
- e. Each Producing Party will maintain a list of all persons granted access to Confidential Information pursuant to this document, and will make that list available to other parties upon request.

11. Cross-examination involving Confidential Information shall be conducted during proceedings that will be closed to all those who are not allowed access to the confidential

Information under this document. The transcript of such proceedings shall be kept under seal for the period prescribed herein or for such other time as may be consistent with Part 200.

12. If at any time another court, administrative agency, person, or entity subpoenas, requests or orders production of Confidential Information or documents containing the same, the party receiving the subpoena, request or order shall promptly notify the Producing Party of that fact to provide the Producing Party with an opportunity to seek appropriate remedies in order to adequately protect the release of any Confidential Information.

13. When the Commission's order in this proceeding is final and no longer subject to appeal, the sealed portion of the Commission's record (paper and electronic) shall be retained under seal by the Commission for a period of 2 years from the date the order was entered, unless such period is extended at some future time pursuant to applicable Commission rules.

14. After the Commission order in this proceeding becomes final and no longer subject to appeal, all persons possessing Confidential Information or copies of documents containing Confidential Information (including but not limited to testimony, exhibits, transcripts, discovery, responses, briefs, e-mails and disks) shall, within thirty (30) days after receiving a written, oral, or electronic request from the Producing Party, return all those materials to the Producing Party or destroy the materials and certify in writing to the Producing Party that such materials have been destroyed. Persons receiving Confidential Information shall also destroy all notes, working papers, e-mail, disks and computer or other network memories and other documents containing Confidential Information and shall certify in writing to the Producing Party that such notes, working papers, documents and electronic records have been so destroyed within thirty (30) days after receiving a written, oral or electronic request from the Producing Party to do the same. Counsel for a party, however, may retain one copy of any such notes,

memoranda, working papers, or other records containing information obtained or derived from any such Confidential Information (Retained Information) for file purposes. Counsel shall continue to abide by the terms of this document regarding such Retained Information.

Additionally, a party need not affirmatively take steps to destroy information that is automatically stored in back-up electronic systems as long as such information is not otherwise retrieved.

15. If a party does not agree with the Producing Party's designation of documents and information as "Confidential", the party (the Challenging Party) shall give the Producing Party reasonable written notice, by e-mail or by U.S. Mail, of its objection(s). The Producing Party and Challenging Party shall attempt to negotiate a satisfactory resolution of the issue. If the Producing Party continues to believe that the nature of the information justifies its designation as "Confidential", it shall so inform the Challenging Party within five (5) business days of receipt of the Challenging Party's objection. If the Challenging Party continues to object to the confidential designation, it may file with the Commission a written notice of objection specifically identifying the documents and/or portions thereof that are the subject of the objection. Because the burden is on the Producing Party to justify any confidential designation, the Challenging Party need not provide reasons in support of the objection. Thereafter, if the Producing Party wants to maintain the confidentiality of the information, it shall file a motion requesting such relief within ten (10) business days of the notice of objection. The motion shall provide in detail, for each document and/or portion of document under challenge, the basis for seeking confidential treatment. An opportunity to submit a response and reply thereto will be provided. A document marked "Confidential" shall be treated as such by all parties during the

pendency of any challenge to such designation until the ALJs issue a ruling altering such designation.

- **Other Objections or Information Not Covered By This Order**

16. The terms of this order are not intended to invalidate or supersede the requirements for protection of confidential, proprietary or sensitive information otherwise provided for by applicable law or agreement. Moreover, this order is not intended to describe all materials regarding which party may make an objection to production, and nothing in this order shall prevent a party from objecting to discovery requests pursuant to Part 200, or to the extent applicable, the Illinois Code of Civil Procedure, the Rules of the Supreme Court of Illinois, or other law, including the relevancy, materiality, or admissibility of any information requested. Likewise, nothing in this order prevents any party from seeking review of any designation made by a Producing Party pursuant hereto.

- **Remedies**

17. Any violation of this order by unauthorized disclosure of any Confidential Information may result in liability for damages and penalties as provided by law. A Producing Party shall have the right to immediately pursue all legal and equitable remedies, including specific performance of the terms of this document and compensatory damages for breach. A showing, however, that the information so disclosed is not entitled to confidential treatment under the law is a defense against any and all claims under this document.

18. Designations that are not made in good faith, including, but not limited to, blanket designations made without consideration of the nature of the specific information being designated, shall constitute a violation of this order and may result in liability for damages and/or the inadmissibility into evidence of the information inappropriately designated as “Confidential”.

19. Nothing in this Order shall limit or supersede any protections applicable to information under other state or federal law.

20. Further rulings regarding Confidential Information may be issued, as needed.

Dated this _____ day of _____.

Administrative Law Judge

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CERTIFICATION FOR PRODUCTION OF CONFIDENTIAL INFORMATION

(FORM 1)

I, _____, certify that I am a(n)
attorney/consultant/employee (circle one) for _____, a party to
this above-captioned proceeding, and that I request access to Confidential Information, as
defined in the Terms Regarding Protection of Confidential Information (Terms), that the
Producing Party will produce. I have read the Terms and agree to abide by the provisions
contained therein, unless revised by the Administrative Law Judges (ALJs), at which time I agree
to be bound by the revisions. By signing below, I am not waiving the right to object or suggest
modifications to the Terms, if revised by the ALJs. I further certify that Confidential
Information (as defined in the Terms) will be used solely for the purposes stated in, and as set
forth in, Terms.

SIGNED: _____
Name: _____
Title: _____
Employer: _____
Employer's Address: _____
Party Representing: _____

Subscribed and sworn to before me
this _____ day of _____, _____.

My commission expires on _____.

Seal: