

**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) Docket No. 12-0598
the Illinois Public Utilities Act, and an Order)
pursuant to Section 8-503 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, Brown,)
Cass, Champaign, Christian, Clark, Coles,)
Edgar, Fulton, Macon, Montgomery, Morgan,)
Moultrie, Pike, Sangamon, Schuyler, Scott and)
Shelby, Illinois.)

**STOP THE POWER LINES COALITION AND CMCLI'S RESPONSE TO ATXI'S
MOTION TO STRIKE AND FOR AN EXPEDITED RULING**

Stop the Power Lines Coalition (“Coalition”) and the Coles and Moultrie County Land Interests (“CMCLI”) by their counsel, Hinshaw & Culbertson LLP, submit this response to the Motion to Strike Certain Intervenors’ Direct Testimony and for an Expedited Ruling, filed by Ameren Transmission Company of Illinois (“ATXI”). This response was prepared and submitted on an expedited basis in accordance with the Administrative Law Judge’s order.¹

The Coalition and CMCLI are opposed to separate and different segments of the proposed ATXI Primary Route. However, in as much as the ATXI motion is directed to multiple unrelated Intervenor Testimony, for administrative efficiency, and for the purposes of this response, the Coalition and CMCLI jointly file this response to the ATXI motion.

¹ While this brief makes the appropriate arguments, it would have been supported by more legal authority if adequate time for research was available. Had the parties been given an opportunity to respond to ATXI’s request for an expedited two day response to ATXI’s fifteen page motion citing approximately thirty-nine cases, counsel for the Coalition and CMCLI could and would have made a strong argument against expedited review, including a death in the immediate family of the lead counsel for the Coalition and CMCLI necessitating travel to the West Coast for a funeral on one of the two days allowed for briefing ATXI’s motion. Setting aside personal circumstances, the undersigned counsel respectfully submits that allowing the parties adequate time to research and brief matters should enable the Commission to more effectively consider important matters in reaching decisions in this proceeding.

I. Summary of ATXI's Arguments

ATXI has moved to strike certain portions of the testimony of Bruce Daily, a member of CMCLI, and portions of the testimony of Perry D. Baird and Margaret Sue Amacher Snedeker, members of the Coalition. The articulated grounds for ATXI's motion are that: (1) "testimony purporting to represent the views of another person constitutes inadmissible hearsay," ATXI Motion at 3; (2) witnesses do not have "standing to raise the interests of others," and therefore cannot testify about property in which they do not have a direct interest, *id.*, 4-8 and (3) those witnesses who did testify on behalf of a group or someone else have all engaged in the unauthorized practice of law. *Id.* at 8-11. Each of these arguments is briefly addressed below.

II. Certain Of ATXI's Arguments Lack Any Basis.

A. The Motion To Strike Bruce Daily's Testimony Concerning Property That He Farms Either As An Owner Or Lessee Is Baseless.

Bruce Daily testified on behalf of the CMCLI. A copy of his testimony is attached as Exhibit A, with line numbers of the language that ATXI is seeking to strike highlighted in yellow. Mr. Daily testified that he was submitting testimony on behalf of himself and the seven other members of CMCLI. Ex. A at 1:7-10. When asked to explain what CMCLI is, Mr. Daily testified:

It is a farming operation that encompasses not only land that I own, but land from other landladies who rent their tracks of land to me for farming.

Id. at 1:12-14. In response to the next question, Mr. Daily identified by parcel number every parcel of land owned by CMCLI that he claimed would be affected by ATXI's proposed 345 kV power line. *Id.* at 1:15 to 2:22. ATXI has moved to strike all of the foregoing testimony on the theory that Mr. Daily is attempting to represent the interests of other parties and testify on their behalf.

While Mr. Daily indicated that he was testifying on behalf of the CMCLI, he specifically identified himself as a member of the group. Ex. A at 1:7-10. He also explained that all of the land that is part of CMCLI is land that he farms as part of one farming operation, either as the owner or lessee, and then he identified the land that he was talking about. *Id.* 1:12 to 2:22. Assuming *arguendo* ATXI's legal objections, there is absolutely no basis to support striking Mr. Daily's testimony (i) as to who the members of CMCLI are, (ii) that he personally farms all of the land owned by the CMCLI, and (iii) where that land is located. It is the land that he farms that ATXI wants to take for its massive power line.

ATXI's motion to strike Mr. Daily's testimony should be categorically rejected.

B. ATXI's Motion To Strike Margaret Sue Amacher Snedeker's Testimony Concerning The Family Cemetery Located On Her Land That ATXI Seeks To Take For Its Power Line Has No Merit.

Ms. Snedeker testified that she owns three pieces of property that lie within the path of ATXI's Primary Route in Clark County between the Kansas Substation and the Indiana state line. A copy of Ms. Snedeker's testimony is attached as Exhibit B. She identified the parcels as an 18.1 acre parcel, a 37.4 acre parcel and a 75 acre parcel. Ex. B at 2:8-10 and 2:18 to 3:33.

ATXI has moved to strike part of Ms. Snedeker's testimony because Ms. Snedeker is "purporting to represent interests of Renner Family Cemetery [sic]". ATXI Motion at 12. A cursory review of Ms. Snedeker's testimony reveals that ATXI's argument is baseless. Ms. Snedeker testified as follows:

Q. Can you please describe the special characteristics of the 18.1 acre parcel of ground that you own?

A. It is farm ground and a Centennial Farm. It is farmed in conjunction with the 37.4 acre parcel as one farm. The Primary Route would go right down the middle of the 37.4 acre Centennial Farm. It was purchased by my great-great grandfather in 1880 and has remained in the family for the last 133 years. Furthermore the Renner Family Cemetery is located in the path of and under the proposed ATXI easement for its Primary Route. If the

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Commission approved ATXI's Primary Route in Clark County, ATXI would build its transmission on or over the graves of my great-great grandparents, Fred and Marie Renner. I assume that ATXI also would tear down the fence surrounding the cemetery and seek to remove the gravestone marking the burial grounds of my great-great grandparents. Attached as STPL Exhibit 5.4 are photographs of my fence surrounding the Renner Family Cemetery and the gravestone of my great-great grandparents, Fred and Marie Renner.

Ex. B at 3:34 to 4:46.

The language that ATXI is seeking to strike under the guise that Ms. Snedeker is "purporting to represent the Renner Family Cemetery" is the sentence in Ms. Snedeker's testimony that states:

Furthermore, the Renner Family Cemetery is located in the path of and under the proposed ATXI easement for its Primary Route.

Ex. B at 3:39-40. See ATXI Motion at 12. Ms. Snedeker is not "purporting to represent the Renner Family Cemetery." Her testimony is focused on ATXI's intent to use the land on which a private family cemetery is located on her property, and bears the remains of her direct ancestors and around which she has placed a protective fence.

ATXI's motion to strike this part of Ms. Snedeker's testimony is devoid of merit and should be rejected.

III. The Testimony Of The Coalition And CMCLI Members Does Not Contain Hearsay.

The testimony of CMCLI member Bruce Daily, and of the Coalition members, Margaret Sue Amacher Snedeker and Perry D. Baird, contain no hearsay. "Hearsay" is defined in Rule 801(c) of the Illinois Rules of Evidence as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The CMCLI and Coalition witnesses do not repeat any out of court statements in an attempt to prove the truth of the matter asserted. Their testimony has none of the classic

hallmarks of hearsay. They do not discuss what other people said or what they heard or what they believe other people may have felt.

Mr. Daily testified about the effect of building ATXI's massive transmission line on the prime farmland property Mr. Daily farms. Ex. A at 3:23 to 6:89. That is not hearsay.

Ms. Snedeker was concerned about the effect of locating ATXI's massive power line on property she owns and in the neighborhood in which she lives. She testified about the special characteristics of the land she owns that lies within the path of ATXI's proposed Primary Route in Clark County, including the fact that two of the parcels are Centennial Farms that have been owned and farmed by her family for 167 and 133 years, respectively. Ex. B at 3:34 through 4:50. With respect to property owned by others in her neighborhood, Ms. Snedeker was concerned about the proximity of ATXI's proposed massive power line to her neighbor's living quarters, so she went out and personally measured the distance between the centerline of ATXI's proposed easement for its Primary Route and her neighbors' living quarters. See Ex. B at 4.61 to 5:82. She testified about the equipment she used for her measurements, the actual distance that she measured, and the number of people living in the neighborhood and where they sleep and spend time based on her personal knowledge. *Id.* That is not hearsay.

Mr. Baird is a practicing lawyer who is a member of the Coalition and is the co-trustee for property that will be severely impacted if ATXI is permitted to build its massive transmission line on the ATXI's Primary Route in Clark County. Mr. Baird's testimony is more extensive, but it also is based upon his personal knowledge, along with public documents, documents filed by ATXI in this proceeding, and documents published on ATXI's Illinois River Project website. A copy of Mr. Baird's testimony is attached as Exhibit C.

In his testimony, Mr. Baird identified five properties that lie on ATXI's Primary Route in Clark County and that based on ATXI's testimony are sensitivities to be considered in the

routing of ATXI's proposed massive transmission line. The five properties were: (1) the residential property for which Mr. Baird serves as co-trustee; (2) a Christmas tree farm known as Dahnke's Pine Patch; (3) the site where the radio transmitter tower of JDL Broadcasting, another intervenor in this proceeding, is located; (4) a rural neighborhood near Marshall, Illinois; and (5) the quarry site of Quality Lime Company, a member of Tarble Limestone Enterprises, another intervenor in this case. See Ex. C at 3:24-37.

Mr. Baird then took public documents he obtained from the Office of Clark County Supervisor of Assessments and ATXI documents that either were filed in this proceeding or were published on ATXI's website, and he annotated them to show the location of ATXI's Primary Route relative to these five areas that ATXI had identified in its testimony as "sensitivities." *Id.* at 3:38 to 8:157. None of that testimony is hearsay.

Mr. Baird also testified about floodplain easements located in the path of the Primary Route in Clark County or that could be inspected if ATXI attempted to alter its route in Clark County. Specifically, Mr. Baird testified about and attached to his testimony a certified copy of a floodplain easement owned by the United States Government in the form of a Warranty Easement Deed (the "Federal Warranty Easement Deed"). As he did with other properties, Mr. Baird testified concerning exhibits to his testimony that were public documents which showed either the location of the land subject to the Federal Warranty Easement Deed or were annotated to also show the location of the Primary Route relative to the Federal Warranty Easement Deed property. Ex. C at 9:138 to 11:221. Mr. Baird also provided testimony concerning another federally owned floodplain easement to be avoided in Clark County, the identity of the owners of underlying land subject to both easements, and the identity of the current owners of adjacent property, all based on Mr. Baird's personal review of verified public records attached to his testimony. *Id.* 10:182-192 and 11:223 to 13:270. While Mr. Baird testified to his interpretation

of the Federal Warranty Deed Easement and offered his views as to the appropriate notice in this proceeding, there is no hearsay in his testimony. His testimony is based on personal knowledge, personal research of public records and ATXI materials, experience and professional training.

When the actual testimony is examined, it is clear that ATXI's hearsay objections have no merit.

IV. ATXI's Peculiar "Standing" Argument Has No Legs.

ATXI makes the peculiar argument that witnesses in this proceeding lack "standing" to testify with respect to property owned by someone else. This argument reflects a fundamental misunderstanding of the concept of standing.

"Standing" is a concept that pertains to a person's or entity's right to participate as a party in a civil lawsuit or administrative proceeding. To have standing, a person or entity seeking to participate in a proceeding as a party must present an actual controversy between adverse parties, as to which controversy the plaintiff is not curious or concerned about the outcome, but possesses some personal claim, status or right, a distinct and palpable injury which is fairly traceable to another's conduct and substantially likely to be prevented or redressed by the grant of requested relief. *Westwood Forum v. City of Springfield*, 261 Ill. App. 3d 911, 921 (4th Dist. 1991). The purpose of a standing requirement is to assure sufficient sharpness in defining issues so that the court may be aided in deciding the case; it is meant to preclude uninterested persons from suing, but it is not meant to preclude a valid controversy from being litigated. *Westwood Forum*, 261 Ill. App. 3d at 921. Moreover, "a nonparty has standing to appeal if he or she has a direct and substantial interest in the subject matter which would be prejudiced by the judgment or benefitted by its reversal." *Lake County Forest Preserve Dist. v. First Nat'l Bank of Waukegan*, 213 Ill. App. 3d 309, 314 (2d Dist. 1991). Pursuant to Section 2-408(f) of the Illinois Code of Civil Procedure, once a non-original party has been permitted to intervene in a case, he,

she or it shall have all the rights of an original party. 735 ILCS 5/2-408(f); *Johnson v. Johnson*, 97 Ill. App. 3d 634, 635 (3d Dist. 1981).

The identified members of the Coalition and CMCLI, respectively, own property or have interests that could be adversely affected by the location of ATXI's proposed massive transmission line on the Primary Route in Clark, Coles and Moultrie Counties. The Administrative Law Judges properly recognized that the Coalition and CMCLI members had standing to intervene because they had rights that could be impacted by the outcome of this proceeding, and granted their respective requests to intervene. See ALJ Rulings December 31, 2012; January 25, 2013; March 1, 2013; and March 14, 2013. Prior to its instant Motion, ATXI never challenged the Coalition and CMCLI members' standing to intervene.

All of the testimony that is the subject of ATXI's motion is directly related to the reason the Coalition and CMCLI members were authorized to participate as parties in this proceeding. They are, respectively, opposed to the Primary Route in Clark, Coles and Moultrie Counties, and they have offered reliable evidence based on personal knowledge as to why ATXI's massive transmission line should not be located on the Primary Route in these three counties. It also is all based on personal knowledge and experience. Bruce Daily testified about the impact on his farming operations. Margaret Sue Amacher Snedeker testified about the impact on her property and about the measurements that she took of the distance of the centerline of Primary Route to her neighbors' residences and living quarters, and Perry D. Baird testified about his review of public records and ATXI documents regarding either "sensitive" areas according to ATXI or federally-owned interests in land. Under any established evidentiary standard, their testimony is admissible.

Having been granted leave to intervene to protect their interests, the Coalition and CMCLI members are entitled to present reliable evidence based on personal knowledge as to

why the proposed ATXI transmission line should not be located on the Primary Route in Clark, Coles or Moultrie Counties. See Rule 601 of the Illinois Rules of Evidence. ATXI's suggestion that the Coalition and CMCLI members do not have "standing" to testify about someone else's property is not well founded or supported.

Moreover, contrary to ATXI's suggestion, there is nothing inherently unfair about permitting the testimony of the Coalition and CMCLI members. It is all based on personal knowledge, and Messrs. Daily and Baird and Ms. Snedeker all are available for cross-examination concerning their testimony should ATXI wish to cross-examine them.

V. No Coalition Or CMCLI Witness Is Engaged In The Unauthorized Practice Of Law.

Neither Mr. Daily, Ms. Snedeker nor Mr. Baird engaged in the unauthorized practice of law, as alleged by ATXI. They all testified as witnesses, based on their personal knowledge. While Mr. Baird offered several legal opinions, he is an expert qualified to render those opinions as a witness, and ATXI has not challenged his testimony in that respect.

What ATXI appears to be attempting to capitalize upon is that both Mr. Daily and Mr. Baird stated that they were testifying on behalf of CMCLI and the Coalition, respectively. Ex. A at 2:7-10 and Ex. C at 2:15 to 3:21. The practical reality is that many utility witnesses testify in Commission proceedings that they are testifying on behalf of the utility, but that does not render their testimony inadmissible or subject them to accusations of unauthorized practice of law.

The Commission's evidentiary rules specifically discourage "unduly repetitious evidence." 83 Ill. Adm. Code §200.610(a). Messrs. Daily and Baird are members of groups of intervenors with similar or identical interests. Rather than presenting repetitious testimony from every member of the group, Messrs. Daily and Baird were selected to serve as witnesses to offer evidence, based on personal knowledge, supporting their respective group's position that the ATXI transmission line should not be constructed on the Primary Route. The fact that they

stated that their testimony was on behalf of the group does not equate to the unauthorized practice of law, nor does it impact the credibility, weight or admissibility of their testimony.

CONCLUSION

For all the reasons set forth above, ATXI's motion should be denied insofar as it seeks to strike the testimony of Bruce Daily, Margaret Sue Amacher Snedeker and Perry D. Baird.

Respectfully submitted,

STOP THE POWER LINES COALITION

_____/s/ Edward R. Gower
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