

**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 8-503 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.)

Docket No. 12-0598

**MOTION TO STRIKE PORTION OF REBUTTAL TESTIMONY
OF DONELL MURPHY AND FOR AN EXPEDITED RULING**

Adams County Property Owners and Tenant Farmers (hereinafter referred to as “ACPO”), by its attorneys, and respectfully requests a ruling striking lines 118-122 of page 6 of the Rebuttal Testimony of Donell Murphy, and for an expedited ruling. In support thereof, ACPO states as follows:

1. On Friday, April 26, 2013, Ameren Transmission Co. of Illinois (“ATXI”) submitted the Rebuttal Testimony of Donell Murphy (“Murphy”), who testified on behalf of ATXI regarding the routing of the proposed transmission line for the Illinois Rivers Project (the “Project”).
2. As part of ATXI’s rebuttal, Murphy testified as follows regarding the Staff’s testimony:

112 Second, Staff has raised concerns regarding the sufficiency of the notice provided to
113 landowners concerning Ameren Illinois Company d/b/a Ameren Illinois' ("AIC") connections to
114 each of the substations proposed by ATXI in this proceeding. However, landowners in the
115 integration corridors for those connections were included in ATXI's landowner notification list in
116 its initial filing and therefore received notice of this proceeding from the Commission. Further,
117 ATXI provided maps showing potential integration corridors where such connections might be
118 made with its initial filing. (see ATXI Exhibit 4.10.) Additionally, as identified in my direct
119 testimony, ATXI Exhibit 4.0, ATXI did respond to questions from interested property owners
120 during the public meetings conducted by ATXI. Therefore, I believe that all the potential
121 property owners associated with possible connection routes have been made aware that
122 additional connections are possible as a result of this proceeding.

3. Murphy attempts to represent the state of mind of the property owners with respect to the Project. This is impermissible for a number of reasons. First, the testimony constitutes inadmissible hearsay. Second, Murphy's testimony is based on speculation rather than her own personal knowledge.

I. Murphy's Testimony Is Inadmissible Hearsay

4. Hearsay is inadmissible under Illinois Rules of Evidence. Ill. R. Evid. 802. Hearsay is 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." *Id.* 801(c). Hearsay is excluded from evidence primarily because the lack of opportunity to cross-examine the declarant renders the statement unreliable. *See People v. Peoples*, 377 Ill. App. 3d 978, 983 (1st Dist. 2007).

5. An out-of-court statement offered for its truth remains inadmissible even when it is quoted or otherwise attached to testimony; "regardless of its format, the presentation

[involving hearsay] is inherently unreliable, offers no opportunity for cross-examination, [and] is unauthenticated.” *Aqua Illinois, Inc.*, Docket 04-0442, Final Order, p. 43, n. 4 (Apr. 20, 2005). The Commission has recognized the dangers of allowing any witness to speak for the views of another. “[T]he facts [to be relied upon by the Commission] must be capable of being tested through cross-examination,” but hearsay is essentially the “selective[] recit[ation]” of the views of a person who the adverse party is “not able to cross-examine.” *Ill. Commerce Comm. on Its Own Motion*, Docket 90-0038, 1990 Ill. PUC LEXIS 640, at *51 (1990).

6. In addition to violating the rules of evidence, the lack of opportunity to cross-examine can also raise due process problems. “Consideration of this evidence at this point in time, without allowing Staff the opportunity to cross-examine [the non-testifying proponent] as to the information therein, contravenes due process.” *Ill. Commerce Comm. on Its Own Motion v. N. Ill. Gas Co.*, Docket 02-0170, 2003 Ill. PUC LEXIS 682, at *36 (2003); *cf. WPS Energy 4 Services, Inc.*, Docket 00-0199, 2001 Ill. PUC LEXIS 597, at *70-71 (May 9, 2001) (“With regard to due process concerns, the Commission notes that WPS received, among other things, . . . an opportunity to present evidence and to cross-examine the Staff witness”).

7. Part 610(b) of the Commission’s Rules of Practice does not establish an exception to the hearsay rule. *See* Ill. Adm. Code § 200.610(b) (“evidence not admissible under such rules may be admitted if it is of a type commonly relied on by reasonable prudent persons in the conduct of their affairs”). Instead, the rule is applicable to “proffered evidence generally, and not solely to evidence subject to the hearsay rule.” *Ill. Comm. Comm’n on its Own Motion*, Docket 03-0596, Administrative Law Judge’s Ruling, p. 1 (Feb. 27, 2004). Rule 610(b) allows the Commission to consider “whether reasonably knowledgeable persons have staked the outcome of their affairs on the reliability of the information” sought to be admitted. *Id.* Therefore, the

appropriate inquiry is whether prudent persons in commerce, government, and the utility industry commonly use the challenged information for the purposes for which the movant offers that information in the case. *Id.*

8. Murphy's testimony is inadmissible hearsay. Murphy states that "ATXI did respond to questions from interested property owners during the public meetings conducted by ATXI." Murphy was not present during all communications with all "interested property owners," and thus, cannot speak to those communications. ATXI seeks to preclude ACPO from conducting meaningful cross-examination on the issue of ATXI's responses to interested property owners because it is submitting testimony by a person who was not involved in all communications.

9. Murphy's statement that "I believe that all the potential property owners associated with possible connection routes have been made aware that additional connections are possible as a result of this proceeding" is also hearsay. Murphy lacks personal knowledge on whether all property owners have been made aware that additional connections are possible, hence her prefatory statement, "I believe." Again, ATXI is attempting to deprive ACPO of meaningful cross-examination in this matter by submitting testimony by a person who lacks personal knowledge and is testifying about her beliefs of the state of mind of "all of the potential property owners." The statement is hearsay and must be stricken by the Administrative Law Judge.

II. Murphy's Testimony Must be Stricken Because It Is Speculative

10. Murphy's testimony regarding ATXI's responses during public meetings which she did not attend, and her testimony regarding her beliefs about the state of mind of "all the

potential property owners” is speculative because she lacks personal, first-hand knowledge regarding the proposition on which she is testifying.

III. Request For An Expedited Ruling

11. As the Administrative Law Judge knows, the evidentiary hearing is scheduled for the week of May 13 through May 17. Moreover, the Administrative Law Judge’s ruling of April 24, 2013 requires that "All parties are directed to cooperate and submit to the Administrative Law Judges by 12:00 P.M. May 9, 2013 a joint list of witnesses indicating on which day each witness is expected to testify and the anticipated duration of cross-examination of each witness by each party. In preparation for creating this list, each party shall provide to ATXI by May 6, 2013, the availability of its witnesses during the evidentiary hearing in this matter and its cross-examination time estimates for other parties’ witnesses." In the interest of administrative efficiency and due fairness, ACPO requests an expedited ruling on this Motion in order that ACPO may have the opportunity to know how best to prepare for the evidentiary hearing. ACPO accordingly recommends that the ATXI be ordered to reply by May 6, 2013 and ACPO to reply by May 7, 2013.

WHEREFORE, Adams County Property Owners and Tenant Farmers request that the Administrative Law Judge enter an order striking the Reubuttal Testimony of Donell Murphy located on page 6, line 118, beginning with the word “Additionally...” through line 122.

Respectfully submitted,



Brian R. Kalb, #6275228
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Telephone: (618) 655-0600
Facsimile: (618) 655-4004
Email: brk@bcplaw.com

PROOF OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

I, Brian R. Kalb, BEING AN ATTORNEY ADMITTED TO PRACTICE IN THE State of Illinois and one of the attorneys representing ADAMS COUNTY PROPERTY OWNERS AND TENANT FARMERS, hereinwith certify that I did on the 2nd day of May, 2013, electronically file with the Illinois Commerce Commission, a Third Amended Petition for Leave to Intervene on behalf of LARRY AND TERRI GROCE, BRENT AND JACQUELINE MAST, STEVE MAST, KEITH C. FLESNER, JOHN AND BETTY PETERS, EDWARD G. BEHRENSMEYER, DAVID G. LEWIS, GREGORY L. EDWARDS, ARSENIUS AND ELEANOR FLESNER, MARVIN AND DENISE MILLER, MELVIN LOOS, AND FRED AND CONNIE LOOS, LOOS FARM SUPPLY, INC., ALEXANDER HOUSE, RICHFIELD FARMS, INC., CENTER SCHOOL FARMS, STUART KAISER, BETTY J. SPECKHART, RUTH PETERS, KATHERINE AND JERRY THOMURE, MARK PETERS, IRENE L. WEBSTER, HI-BLU DAIRY FARM, BARBARA MILLER, and PAM PETERS (hereinafter referred to as the "ADAMS COUNTY PROPERTY OWNERS AND TENANT FARMERS"), and electronically served the same upon the persons identified on the Commission's official service list.

By: 

Brian R. Kalb, #6275228
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Telephone: (618) 655-0600
Facsimile: (618) 655-4004
Email: brk@bcpklaw.com