

**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) Docket No. 12-0598
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.)

**AMEREN TRANSMISSION COMPANY OF ILLINOIS’ MOTION TO STRIKE
NOTICE OF SUPPORT BY RURAL CLARK AND EDGAR COUNTY
CONCERNED CITIZENS FOR THE ALTERNATIVE ROUTES
PROPOSED BY STOP THE POWER LINES COALITION**

Pursuant to Rule 200.190 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice and Procedure, 83 Ill. Adm. Code §§ 200.190 and 200.660, Ameren Transmission Company of Illinois (“ATXI”) respectfully requests issuance of an order striking Rural Clark and Edgar Counties Concerned Citizens’ (“RCECCC”) “Notice of Support by RCECCC for the Alternative Routes Proposed by Stop the Power Lines Coalition” (May 3, 2013) (hereinafter “Notice”).) Although styled as a “Notice,” RCECCC’s filing is in fact testimony. The deadline established by the Administrative Law Judges (“ALJs”) for filing Staff or intervener direct testimony was March 29, 2013, and the deadline for filing rebuttal testimony was April 12, 2013. (Notice & Case Management Plan, p. 2 (Jan. 25, 2013).) As such, RCECCC’s testimony has been filed at least three weeks after the deadline established by the ALJs. Furthermore, the “Notice” improperly attempts to re-introduce testimony of RCECCC member George Orin that has already been stricken by the ALJs. (Notice of ALJs’ Ruling, p. 1

(April 24, 2013) (striking the portion of George Orin’s Direct Testimony on behalf of RCECCC which is reproduced in the “Notice”).)

For these and the reasons set forth below, the Commission should strike the “Notice” in its entirety.

INTRODUCTION

On January 25, 2013, the ALJs adopted a Revised Case Management Plan (“CMP”), which established a detailed schedule for this proceeding, including the March 29 and April 12, 2013 deadlines for submission of direct and rebuttal testimony. (Notice & Case Management Plan, p. 2 (Jan. 25, 2013).) The purpose of the CMP is to create an orderly process for the submission of testimony, and it must be honored. *See* 83 Ill. Adm. Code § 200.660 (“Any party or staff witness who fails, without good cause shown, to comply with an order of the [ALJs] for the service of testimony and exhibits may be limited in the presentation of evidence in the proceeding or otherwise restricted in participation, to avoid undue delay and prejudice.”); *see also Commonwealth Edison Co.*, Notice of ALJ Ruling, Docket 12-0298 (June 1, 2012) (denying untimely petition to intervene and striking filed “comments” not provided for in established case schedule).

DISCUSSION

RCECCC filed its petition to intervene on February 13, 2013, well after the ALJs had adopted the CMP, and well before the established deadlines for submission of testimony. (Pet. to Intervene of RCECCC, (Feb. 13, 2012).) In its Petition to Intervene, RCECCC acknowledged its obligation to abide by the prior rulings of the ALJs, including the CMP. *Id.*; *see also* 83 Ill. Adm. Code § 200.200(e) (requiring intervenors to accept the status of the record at the time of their intervention). RCECCC did not file a timely alternative route proposal. Instead, RCECCC

served the Direct Testimony of George Orin on all parties on March 27, 2013. (*See* Motion for Leave e-Docket *Nunc Pro Tunc* to March 27, 2013 the Direct Testimony of George Orin on Behalf of RCECCC, p. 2 (April 15, 2013).) The ALJs struck approximately 16 lines of Mr. Orin’s testimony because it constituted a late-filed alternative route proposal. (Notice of ALJ Ruling, p. 1 (April 24, 2013).)

The “Notice” is in flagrant disregard of both the CMP and the subsequent ALJ ruling striking Mr. Orin’s late-filed alternative route proposal.

First, the “Notice” is improper because it seeks to re-introduce testimony that was previously stricken by the ALJs. The “Notice” constitutes RCECCC’s second attempt to re-characterize sixteen lines of Mr. Orin’s Direct Testimony as “support” for alternative routes proposed by STPL. (*See* RCECCC’s Response to ATXI’s Motion to Strike Certain Intervenors’ Untimely Alternate Route Proposals, p. 2 (April 18, 2013).) The ALJs considered this argument and rejected it, finding instead that the 16 lines of testimony constituted an improper alternative route proposal. (Notice of ALJs’ Ruling, April 24, 2013.) RCECCC has not provided any explanation for its failure to abide by the ALJs’ Ruling on this point. Instead, RCECCC acknowledges the fact that the testimony has been stricken, and states its belief that the testimony “should be in the record for the Commission to consider.” (RCECCC “Notice,” p. 2 n. 1 (May 3, 2013).) The ALJs have already determined that the testimony should not be part of the record, and RCECCC is obligated to abide by the ALJs’ ruling.

Second, to the extent that it serves to “notify . . . parties to this proceeding of [RCECCC’s] support” for alternative routes proposed by Stop the Power Lines Coalition (“STPL”), the “Notice” constitutes improper, late-filed testimony. Testimony in this proceeding was due, at the latest, by March 29, 2013. (Notice & Case Management Plan, p. 2 (Jan. 25,

2013).) If RCECCC wished to explicitly support STPL's alternative routes, it had ample opportunity to provide that support in its testimony. But it failed to do so. Instead, without an explanation for its disregard for the filing deadline, RCECCC has attempted to add testimony to the record in this proceeding at least three weeks after it was due.

The Commission's Rules of Practice provide that parties who fail to comply with ALJ orders regarding service of testimony "may be limited in the presentation of evidence in the proceeding or otherwise restricted in participation, to avoid undue delay and prejudice." 83 Ill. Adm. Code § 200.660. RCECCC has blatantly failed to comply with both the ALJs' order striking this portion of its testimony, and the CMP setting the deadline for filing testimony. As such, RCECCC's "Notice" should be stricken, and RCECCC should be prevented from presenting testimony at hearing related to its "support" of STPL's alternative routes.

If RCECCC chooses, it can address its preferences in a brief along with the other parties, at the time the schedule so requires. RCECCC will have an opportunity to articulate its position in brief, but not in testimony already stricken or otherwise filed out of time.

CONCLUSION

For the reasons set forth above, ATXI respectfully requests that the Commission grant its Motion to Strike.

Dated: May 6, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert Sturtevant

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CERTIFICATE OF SERVICE

I, Albert Sturtevant, an attorney, certify that on May 6, 2013, I caused a copy of the foregoing *Motion to Strike Notice of Support by Rural Clark and Edgar County Concerned Citizens for the Alternative Routes Proposed by Stop the Power Lines Coalition* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert Sturtevant

Attorney for Ameren Transmission
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