

**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

**REPLY IN SUPPORT OF 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 for its Reply in Support of its Motion to Strike Portion of Rebuttal Testimony of Donell Murphy (the “Motion”), states as follows:

1. Ameren Transmission Co. of Illinois (“ATXI”) opposes the Motion because it contends that (1) Murphy’s disputed testimony is not hearsay, (2) the statements are offered by an expert witness, and (3) the statements are not speculative. ATXI’s opposition bolsters ACPO’s arguments to have Murphy’s testimony stricken rather than defeat them.

2. ATXI claims that Murphy’s statement, “ATXI did not respond to questions from interested property owners during the public meetings conducted by ATXI” is not hearsay because the statement was offered “for the purpose of establishing the *fact* that ATXI responded to certain questions. It is not offered to prove the *content* of the questions or the responses provided.” (Emphasis in original). Contrary to ATXI’s subterfuge, the testimony is an out-of-court statement offered to prove the truth of the matter asserted. Murphy’s statement that “ATXI

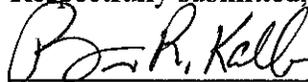
did respond to questions from interested property owners” is offered to prove ATXI responded to questions from interested property owners. Indeed, ATXI admits that Murphy’s testimony is a “statement”. The statement is declarative and asserts a fact: that ATXI responded to questions. ATXI submission of the testimony of Murphy for the purposes of proving this fact denies ACPO of the right to cross-examine the true declarant of the statement, which was someone other than Murphy. Accordingly, the ALJ must strike this testimony as inadmissible hearsay.

3. ATXI attempts to sidestep the hearsay testimony by claiming that Murphy is an expert and that she can rely on data or facts outside of the court in order to form an opinion. ATXI attempts to bootstrap this argument with its argument regarding why Murphy’s testimony is not speculative—because she is an expert witness. The general rule regarding the information an expert may rely upon in reaching her opinions is not as broad as ATXI would like it. Under Illinois law, speculative testimony from an expert is inadmissible without a proper foundation. People v. Patel, 851 N.E.2d 747 (1st Dist. 2006), Royal Elm Nursing and Convalescent Center, Inc. v Northern Illinois Gas Co., 526 N.E.2d 376 (1st Dist. 1988). “[A]n expert may not state a judgment or opinion based on conjecture.” People v. Ceja, 789 N.E.2d 1228, 1243 (Ill. 2003). ATXI did not offer any foundation to support Murphy’s statements. Murphy simply cited, in conclusory fashion, to ATXI Exhibit 4.0, which is the Direct Testimony of Donell Murphy. ATXI Exhibit 4.0 does not outline what information Murphy relied upon to conclude that ATXI responded to questions from interested property owners during public meetings. Contrary to ATXI’s claims, speculative testimony, even from an expert, is not proper and should be stricken by the Court.

4. The same analysis applies to Murphy's statement that "I believe that all potential property owners associated with possible connection routes have been made aware that additional connections are possible as a result of this proceeding." ATXI states that this statement is not speculative because Murphy attended public meetings. ATXI referred the ALJ to Murphy's Direct Testimony, ATXI 4.3, pp. 11-22. ACPO assumes ATXI is referring to ATXI 4.0, pp. 11-22, titled, "Public Meeting Process" because ACPO could not cross-reference the citation to ATXI 4.3, pp. 11-22. Murphy does not testify in her Direct Testimony, however, that she attended every ATXI public meeting. Moreover, Murphy does not provide any foundation for making a broad statement such as "all potential property owners" have been made aware that additional connections are possible as a result of the proceedings. There is no support for Murphy's conclusory statement that every property owner to these proceedings have been made aware that additional connections are possible. Accordingly, the ALJ must strike the testimony.

WHEREFORE, for the foregoing reasons, ACPO respectfully requests that the ALJ enter an order striking lines 118-122 of page 6 of the Rebuttal Testimony of Donell Murphy, and grant ACPO any additional relief the ALJ deems just and proper.

Respectfully submitted,



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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 7th day of May, 2013, electronically file with the Illinois Commerce Commission, a Reply in Support of Motion to Strike Portion of Rebuttal Testimony of Donell Murphy and for an Expedited Ruling 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: 
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