

**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

STOP THE POWER LINES COALITION’S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE SUPPLEMENTAL DIRECT TESTIMONY INSTANTER

Stop the Power Lines Coalition (“Coalition”) submits this reply in support of its Motion for Leave to File Supplemental Direct Testimony *Instanter*. Given the timing of the motion and the time allowed for the reply, the Coalition has attempted to succinctly address the issues raised by ATXI in its response.

I. The Reason For The Motion

The Coalition and Ameren Transmission Company of Illinois (“ATXI”) have entered into a stipulation admitted into the record in this docket in which they agreed to support ATXI’s Alternate Route between the Kansas Substation and the Indiana State line. ATXI’s brief accuses the Coalition of seeking to “burden the record” concerning ATXI’s original proposed Primary Route for this segment of the proposed transmission line. ATXI Brief at 2, nt. 2. ATXI advised the Coalition that ATXI contends the Primary Route is a viable route that could serve as an alternative in the event the stipulated route is not approved, and has submitted rebuttal testimony to that effect. ATXI Ex. 13.0 at 60:1281 to 1284 and 62:1340-41. The Coalition contends that the Primary Route is not viable.

II. Timing Of The Motion

ATXI's rebuttal testimony filed on April 26, 2013 for the first time endorsed "adjustments" to the Primary Route. See ATXI Ex. 13.0 at 65:1405 to 66:1421. One is actually a modified route, and both are designed to avoid use of the federal floodplain easement. ATXI knew about the federal floodplain easement issues prior to filing its Petition, yet waited for its rebuttal testimony to surface its solutions.

While ATXI identified its Modified Route in discovery, as the Administrative Law Judges ruled in this hearing on May 15, 2013, the parties cannot address in testimony a route that is not in evidence. (The issue in the hearing arose in cross-examination of Mr. Dauphinais with respect to a Mt. Zion alternate route that was filed but not supported by evidence). There was no proposed modified route for the Coalition to address until ATXI filed its rebuttal testimony.

The Coalition's local research is performed by volunteers. Thus, while the Coalition would have preferred to have brought this motion earlier, it brought it as soon as the local research was completed.

The Coalition brought the motion now because it believed it was more fair to make ATXI aware of Mr. Baird's research now rather than to first introduce it at the hearing. The ATXI testimony that Mr. Baird was addressing is testimony that should and could have been submitted in ATXI's direct testimony. Modified routes should not surface in the proponent's final written testimony, regardless of the moniker ATXI elects to attach to the testimony.

The Coalition continues to believe that, under the circumstances, the filing of the motion was both appropriate and as timely as it could be.

III. Evidentiary Issues

If ATXI takes issue with limited opinions offered by Mr. Baird in his proposed testimony, the proper approach and remedy is for ATXI to file a motion to strike. The ALJ's

ruling would be governed by Rules 702, 703 and y704 of the Illinois Rules of Evidence. Absent a motion to strike, barring the whole filing is not an appropriate remedy.

Contrary to what ATXI attempts to portray, there is a substantial amount of evidence in Mr. Baird's Supplemental Direct Testimony that is not opinion testimony that most assuredly would survive any motion to strike. For example, Mr. Baird identifies landowners on the modified route who were not given notice of this proceeding. [STPL Ex. 8.0 at 45-72]¹. Mr. Baird also provides evidence of the federal government's land use that is inconsistent with ATXI's proposal to use the federal flood plain easement property. [STPL Ex. 8.0 at 73-105; STPL Ex. 8.5].

IV. Application Of The Word "Struthious"

ATXI's response is replete with invective and colorful adjectives and adverbs. ATXI accuses the Coalition of adopting a "struthious" approach to compliance with the Commission's rules providing that "the petitioner...shall open and close." ATXI Brief at 3, citing 83 Ill. Adm. Code §200.660. That issue is addressed in ATXI's alternate prayer for relief, which would give ATXI the opportunity to file surrebuttal testimony.

What the Commission's rules do not grant to ATXI is the right to file a new route in its final testimony, and deprive other parties of any opportunity to respond to a new proposal. What ATXI has done is to ignore the federal floodplain issue in its opening testimony, propose solutions in its rebuttal testimony, and then cloak itself in the Commission's rules in an effort to deprive other parties of the right to file evidence in response to its new proposal. To the extent

¹ ATXI tries to excuse this oversight by arguing that under the Commission's rules, only landowners disclosed in the tax collector's records are relevant. ATXI Brief at 2. However, the statute references landowners, and the ALJ's rulings in this matter have focused on "affected landowners," not "affected landowners who are identified in the records of the tax collector." See 220 ILCS 8-406.1(a)(3); ALJ's January 17, 2013 (affected landowners); ALJ's January 16, 2013 Memorandum to Commission (affected landowners). Furthermore, a federal government official told ATXI representatives that the federal government owned an easement in the path of the Primary Route.

“struthius” has any application in this matter, the ostrich-like approach adopted by ATXI appears to be one that qualifies for the appellation “struthious”.

V. Conclusion

For all the reasons set forth above and in the Coalition’s motion, the Coalition’s Motion for Leave to File Supplemental Direct Testimony Instantly should be granted. The Coalition has no objection if ATXI is granted the right to file surrebuttal testimony. Perhaps in the future ATXI will not insist upon inappropriate expedited proceedings for matters of this nature, and these sorts of timing issues can be avoided.

Respectfully submitted,

Dated: May 16, 2013

STOP THE POWER LINES COALITION

/s/ Edward R. Gower
Edward R. Gower
One of Its Attorneys

Edward R. Gower
Raylene DeWitte Grischow
Hinshaw & Culbertson LLP
400 South Ninth Street, Suite 200
Springfield, IL 62701
217-528-7375
egower@hinshawlaw.com