

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Dakota Access, LLC)	
)	Docket No. 14-0754
Application pursuant to Section 15-401 of)	
the Common Carrier by Pipeline Law and)	
Sections 8-503 and 8-509 of the Public)	
Utilities Act and for a Certificate in Good)	
Standing and Related Authority to Construct)	
and Operate a Petroleum Pipeline as a)	
Common Carrier Pipeline and when)	
Necessary to Take Private Property as)	
Provided by the Law of Eminent Domain.)	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION’S OBJECTION AND
RESPONSE IN OPPOSITION TO THE MOTION OF LEAVE OF TABITHA TRIPP**

NOW COMES the Staff of the Illinois Commerce Commission, by and through its undersigned counsel, and, in response to Tabitha Tripp’s Motion (“Motion”), states as follows:

1. On October 8, 2015, Tabitha Tripp filed a Motion for Leave to Admit into Evidence the Testimony and Exhibits 1 through 3 of Tabitha Tripp and Rebuttal Testimony of Tabitha Tripp, filed July 22 and August 4, 2015, respectively (“Motion”).

2. On October 9, 2015, the Administrative Law Judge (“ALJ”) issued a Notice of ALJ’s Ruling setting October 13, 2015, as the date by which any responses to the motion must be filed.

3. The Commission rules are clear that the failure of any party to appear at a hearing without good cause and without previously notifying the Commission or the Hearing Examiner and parties of record of its inability to appear may be grounds for dismissal or deciding against the interest of such defaulting party. 83 Ill. Admin Code

§200.550. In this case, not only did Ms. Tripp fail to appear at the hearing, but she failed to notify Staff, or any others, of her inability to appear. She has not indicated that she made any attempts to notify the Commission, the ALJ, Staff, or any other party of any inability to appear. This alone is grounds for deciding against the interest of this defaulting party. *Id.*

4. Ms. Tripp indicates that she “had a computer hard drive crash and then the graphics board went down days before the evidentiary hearing and it took over a month to repair.” That does not explain the lack of notification to any of the parties, the ALJ or the Commission. A computer hard drive crash may be inconvenient, but it would not eliminate phone service, the use of a computer at a public library, or the ability to participate at the hearing in person or via telephone. It is precisely this type of failure to exercise due diligence that the Commission rules are intended to prevent. *See Hu v. Illinois Power Company*, 2003 WL 1984508, Docket No. 02-0249 (2003) (complaint dismissed without prejudice for failure to appear at the hearing); *Ciacio/Green River Oaks v. Commonwealth Edison Co.*, 2015 WL 5472900, Docket No. 13-0129 (2015) (complaint dismissed for failure to appear or to advise the ALJ or the other party of his intention not to attend the hearing).

5. Indeed, granting her request at this point in the procedural schedule would unduly prejudice and burden Staff and the other parties and would be disruptive to the proceeding. It would provide Ms. Tripp an opportunity to bring this new “evidence” into the record after initial briefs have been filed, which would prejudice the other parties by denying them an opportunity to address Ms. Tripp’s evidence in their initial briefs. Moreover, doing so would deny Staff and the other parties a meaningful opportunity to

respond to any of Ms. Tripp's arguments in opposition to their positions because she would be presenting them for the first time in her reply brief. This would violate due process. See, *Illinois American Water Company*, 1995 WL 17200677, Docket No. 95-0076 (1995) (Commission denied motion to admit affidavit into evidence where it was untimely; admission of the affidavit into evidence without providing the parties with the opportunity to respond would be prejudicial).

6. Additionally, Staff objects to the admission of the documentation at issue because, among other things, it lacks a proper foundation for expert testimony, mischaracterizes Staff testimony, lacks any basis for its inflammatory assertions, contains improper hearsay from third parties for which Ms. Tripp does not appear to have any direct knowledge, contains procedural defects, and is simply not credible. The Commission and Illinois Courts have stated that "to be admissible the evidence must possess a high degree of reliability, and be of the type that a reasonably prudent person would rely on in making investments." *Illinois Commerce Commission On its Own Motion, Proceeding to adopt an electric energy plan for Commonwealth Edison Company*, 1990 WL 10554152, Docket No. 90-0038 (1990). See *Metro Utility v. Illinois Commerce Comm'n*, 193 Ill. App. 3d 178, 549 N.E.2d 1327 (2nd Dist. 1990); *Fagiano v. Police Bd. of City of Chicago*, 123 Ill. App. 3d 963, 463 N.E.2d 845 (1st Dist. 1984). Ms. Tripp's submissions fail to meet this standard.

7. First, with respect to "Intervenor Testimony of Tabitha Tripp, July 22, 2015," this is a one page short statement that the purpose of her testimony is to, among other things, present documentation to attempt to refute the testimony supplied by ICC Staff (exhibit 1.0) stating public demand and necessity for the pipeline. *Id.* Ms. Tripp has not

laid any foundation or provided any support for the notion that she is qualified as an expert witness or qualified to address the expert testimony of Staff or any others. To the contrary, Ms. Tripp merely attaches what appear to be hearsay documents from third parties that are unverified by the preparer, in violation of Commission Rule 200.620, 83 Ill. Admin. Code 200.620, with out any apparent direct knowledge of Ms. Tripp herself. These documents are not adequately supported, not reliable and should not be allowed to confuse the record.

8. “Exhibit 1 (Public Necessity and Oversupply)” appears to contain improper hearsay. It is unclear who wrote the text addressing Mr. Maple’s testimony. If Ms. Tripp wrote it, there is no foundation laid to be considered expert testimony. She does not appear to be qualified as an expert or have any degrees in the subject matter on which she purports to testify. At best, it could perhaps be considered mere lay opinion testimony. Ms. Tripp has also included in Exhibit 1 a number of links to articles by others that appear to be from the internet. It is unclear for what purpose these links to articles are included, but these appear to be improper hearsay from third parties without any particular showing of direct knowledge of Ms. Tripp or an explanation as to whether these are even allowable under the applicable copyright law. In any event, such an exhibit does not provide reliable information for the record, and should not be admitted.

9. “Exhibit 2 (Analysis of Financial Liability and Risk)” also appears to contain improper hearsay without any particular direct knowledge of Ms. Tripp. The exhibit contains testimony by someone named N. Tenney Naumer, not Ms. Tripp. There is no further information regarding this N. Tenney Naumer, no foundation laid for the expertise of the witness, and that person was not made available for cross-examination at the

hearing. The exhibit makes numerous unsubstantiated statements against Staff testimony without any apparent basis to do so. As such, it does not assist the record and may not be relied upon. Rather, it would only serve to confuse the record and should not be admitted.

10. “Exhibit 3 (Report Carolyn Raffensperger)” also appears to be hearsay from a third party without any showing of direct knowledge of Ms. Tripp. Specifically, the exhibit appears to be a report of a third party, Ms. Raffensperger, who, again, was not made available for cross-examination at the hearing and did not provide an affidavit or verification of the testimony. Moreover, the exhibit is labeled as a financial report, but it is not a report on the applicant. In that sense, it appears to be irrelevant to this proceeding and has not been shown to be reliable. As such, it should not be admitted.

11. “Exhibit 3[sic]4 (Public Utility Commission Letter)” submitted July 22, 2015, is an unsigned letter to a number of state utility commissions, dated July 22, 2015, allegedly from a number of apparently environmentally focused organizations. It is unclear whether or if this letter was ever sent and/or by whom. It is also unclear what connection this letter has to the instant proceeding or whether Ms. Tripp was a signatory to the letter. As such, it appears to be hearsay from third parties with little, if any, probative value, should not be relied upon here, and should not be admitted.

12. Regarding what has been labeled – “Tabitha Tripp Rebuttal Testimony, filed August 4, 2015,” this item is not in fact testimony. Ms. Tripp’s actual rebuttal testimony was that which she filed on July 22, 2015. What she has called “Rebuttal Testimony” is instead a pleading in response to Staff’s objection to Ms. Tripp’s petition to intervene for lack of standing. Further, the August 4, 2015 filing contains inflammatory rhetoric and

allegations that are not substantiated and should not be relied upon. The item serves no purpose in the record as the intervention was ruled upon and is no longer at issue. For these and other reasons, the “Rebuttal Testimony” filed August 4, 2015 should not be admitted.

13. In summary, Ms. Tripp has fallen well short of diligent participation in this proceeding. She failed to appear at the hearing, failed to notify the Commission or other parties of an inability to do so, and has not adhered to the procedural schedule in this matter. Moreover, her “testimony” attempting to refute Staff expert testimony lacks a proper foundation, contains improper hearsay of third parties without any apparent direct knowledge of Ms. Tripp, mischaracterizes Staff testimony, lacks any basis for its inflammatory assertions, contains procedural defects, and lacks the high level of reliability required for admissibility into the record as evidence. To admit these items into the record as evidence at this late date would be prejudicial to Staff and the other parties. As such, her Motion should be denied.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that Tabitha Tripp’s Motion be denied.

Respectfully submitted,

/s/Christine F. Ericson

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