

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Ameren Transmission )  
Company of Illinois for Other Relief or, in the Alternative, )  
a Certificate of Public Convenience and Necessity )  
Authorizing it to Construct, Install, Own, Operate, ) File No. EA-2015-0146  
Maintain and Otherwise Control and Manage a )  
345,000-volt Electric Transmission Line from Palmyra, )  
Missouri, to the Iowa Border and Associated Substation )  
Near Kirksville, Missouri. )

**ATXI'S RESPONSE TO NOTICE REGARDING  
DISCOVERY AND EVIDENTIARY MOTIONS**

COMES NOW Ameren Transmission Company of Illinois (“ATXI”), and for its response to the Commission’s January 20, 2016 *Notice Regarding Discovery and Evidentiary Motions*, respectfully states as follows:

1. There are pending before the Commission four motions to strike/deny admission of all or some portion of the written testimonies and schedules of four witnesses tendered by the Neighbors.<sup>1</sup> These motions were filed to give notice to the Neighbors and the Commission of the significant evidentiary deficiencies that ATXI believes and contends exist with respect to these testimonies and schedules, as outlined in the motions, in an effort to preserve hearing time and otherwise make the conduct of the evidentiary hearings next week more efficient and expeditious.

2. While the bases are not entirely the same in each case, significant evidentiary deficiencies common to all of these testimonies and schedules are that they purport to offer opinions which are not offered by an expert on the matters for which the opinions are offered (rendering them incompetent under basic evidentiary principles) and they are based on, or outright consist of, out-of-court statements made by out-of-court declarants – i.e., are rank

---

<sup>1</sup> Neighbors United Against Ameren’s Power Line.

hearsay – which, upon objection, must be excluded. In several instances the testimony (or schedules) is also totally lacking in foundation and there are also instances where the witness is improperly offering purely legal conclusions.

3. While ATXI acknowledges that there are a number of objections and written testimony and schedules to address, ATXI urges the Commission to take these motions up, and rule upon them, at the inception of the evidentiary hearings next week. To defer ruling until after the evidentiary hearings are complete would create significant practical problems for the litigants and the Commission alike, as outlined below.

4. If the objectionable testimony and schedules are admitted (even conditionally, subject to the pending objections), it may be necessary for the parties (and Commissioners) to inquire about the objected-to materials during cross-examination and for counsel for the Neighbors to then address that cross-examination on redirect. This will increase the hearing time necessary to try this case, and in turn would mean that the hearing transcript will effectively be littered with testimony that should not have been allowed and that the Commission cannot lawfully rely upon. To remedy these problems, the Commission would, after-the-fact, have to rule on the objections post-evidentiary hearing and also determine what portions of the hearing transcript should also be stricken because it will have reflected this incompetent testimony.

5. It appears inevitable that in connection with the determinations that would have to be made regarding what portions of the transcript must be stricken, there will be significant arguments – on both sides – as to what testimony can be kept and what testimony must be discarded. This will consume resources of not only the parties, but of the Commission. Moreover, it will take time and likely delay finalization of the hearing transcripts upon which briefs will need to be based, resulting in a probable delay in the ability to complete briefing and

consequently a delay in resolution of the case. ATXI will not repeat here its significant concerns with further delays, which are well documented.

6. ATXI recognizes that the Commission is not subject to the technical rules of evidence and that, as in a bench trial before a court, the Commission tends to admit evidence that in its discretion it could certainly exclude, but that it is not required to exclude. ATXI is not taking issue with such an approach. However, the objected-to testimony and schedules at issue here are objectionable because their admission would violate *fundamental* rules of evidence by which the Commission is bound, the disregard of which would be error.

7. As the Commission noted, there are 31 witnesses tendered for the upcoming hearings. While ATXI would expect that there may not be much in the way of examination of many of them, and does believe hearings can be concluded in the allotted hearing time, failing to dispose of the objectionable evidence will serve to broaden the issues with which the parties must deal and for which examination will be necessary, and will create the practical, “chicken and the egg” problem outlined above, where once the record has been purportedly made, it would remain subject to change.

8. With respect to the motion seeking to strike certain local public hearing exhibits, ATXI agrees that ruling on that motion could be deferred, although if an effort is made to utilize the exhibits that have thus far only been conditionally admitted, ATXI requests that the Commission clarify that further objection to them at the hearing is unnecessary to preserve the pending objections. ATXI would, however, note that a ruling on this motion could also be made at the inception of the hearings given that, when faced with precisely the same situation in another CCN case involving Ameren Missouri’s Labadie utility waste landfill, as cited to in the motion, the Commission properly excluded such materials. The nature of the materials at issue

here, and the objections, are in all material respects the same as they were in the Labadie case and the same ruling should be made.

**WHEREFORE**, ATXI respectfully requests that the Commission take up the pending motions to strike/objections to the written testimonies and schedules of which note is made herein at the inception of the evidentiary hearings, and rule on them, so as to avoid the admission of incompetent evidence and the practical problems conditional admission of such evidence would create for the Commission and the parties and, if it does not rule on the pending motion respecting certain conditionally-admitted local public hearing exhibits, that it clarify that further objection thereto is unnecessary to preserve the pending objections. ATXI respectfully suggests that in taking up the motions on Monday morning, the Commission afford counsel for the Neighbors the opportunity to present oral argument on the written motions, and ATXI the opportunity to then reply to said argument, with the Commission to rule thereafter.

Respectfully submitted,

/s/James B. Lowery

James B. Lowery, Mo. Bar #40503

Michael R. Tripp, Mo. Bar #41535

SMITH LEWIS, LLP

P.O. Box 918

Columbia, MO 65205-0918

(T) 573-443-3141

(F) 573-442-6686

[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

[tripp@smithlewis.com](mailto:tripp@smithlewis.com)

Jeffrey K. Rosencrants, Mo. Bar #67605  
Senior Corporate Counsel  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149  
(T) (314) 554-3955  
(F) (314) 554-4014  
[Jrosencrants@ameren.com](mailto:Jrosencrants@ameren.com)

*Attorneys for Ameren Transmission Company of  
Illinois*

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Response in Opposition has been e-mailed, this 22nd day of January, 2016, to counsel for all parties of record.

/s/James B. Lowery  
James B. Lowery