

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS  
PROCEDURAL CONFERENCE

In the Matter of the )  
Application of Ameren )  
Transmission Company of )  
Illinois for a Certificate )  
Certificate of Convenience )  
and Necessity Under Section ) Case No. EA-2024-0302  
393.170.1, RSMo Relating to )  
Transmission Investments in )  
Northwest and Northeast )  
Missouri )

TUESDAY, AUGUST 19, 2025  
10:00 a.m.

Jefferson City, MO  
via WebEx

VOLUME 7

RILEY FEWELL, Presiding

REGULATORY LAW JUDGE

KAYLA HAHN, Chair,

MAIDA J. COLEMAN,

GLEN KOLKMEYER,

JOHN MITCHELL,

COMMISSIONERS

Transcribed

By: JOE HERMAN

1 THE COURT: In the matter of the  
2 application of Ameren Transmission Company of  
3 Illinois for a certificate of convenience and  
4 necessity under section 393.170.1, Revised  
5 Statutes of Missouri relating to transmission  
6 investments in northwest and northeast  
7 Missouri. This case number EA-2024-0302.

8 My name is Riley Fewell and I'm the  
9 regulatory law judge in this matter. We will  
10 begin with the attorneys making their entries  
11 of appearance. We do not have a court  
12 reporter with us this morning, but the  
13 conference will be recorded to be later  
14 transcribed. If we can begin with Ameren  
15 Transmission company.

16 MR. FOSCO: Thank you, Your Honor.  
17 Appearing on behalf of Ameren Transmission  
18 Company of Illinois, Carmen L. Fosco with the  
19 law Firm of Wits ThirdEvent and Eric Darmont  
20 and Jason Kumar with Ameren Services Company.  
21 Our contact information is off record.

22 THE COURT: Thank you, Council. The  
23 commission staff.

24 MR. VANDERGRIFF: Good morning, Your  
25 Honor. I'm Eric Vandergriff representing

1 staff today. Our business addresses the  
2 governor office building at 200 Madison Street  
3 P.O. Box 360, Jefferson City, Missouri 65102.

4 THE COURT: Thank you, Council. The  
5 office of public counsel.

6 MS. MARTIN: Thank you, Judge. My name  
7 is Anna Martin. I am the associate attorney  
8 representing the office of the public council.  
9 And I believe our address is on record.

10 THE COURT: Thank you, Council. And I  
11 don't know how many of the interveners are  
12 present. I can go through them real quick. I  
13 know many of the nonlandowner interveners  
14 don't really have a preference on the hearing  
15 and many of it ask to be excused, but I'll go  
16 through them regardless. Clean Grid alliance.  
17 MISO.

18 MR. STEINMEIER: Yes, Your Honor.  
19 William D. Steinmeier PC 2031 Tower Drive,  
20 Jefferson City, MO 65109. Appearing on behalf  
21 of MISO.

22 THE COURT: Thank you, Council. Missouri  
23 Joint Electric Utility Commission? Council.  
24 Okay. Renew Missouri.

25 MS. MARTIN: Nicole Merz with Renew

1 Missouri. And my information has been  
2 previously provided in the record. Thank you.

3 THE COURT: Thank you, Sierra Club. Mr.  
4 Harding, believe I saw you were on.

5 MR. HARDING: Yes, Mark Harding. And I  
6 believe that my address is on record. So  
7 present.

8 THE COURT: Thank you, Mr. Harding. Mr.  
9 Matthews.

10 MR. MATTHEWS: Present. And my address  
11 information is on record.

12 THE COURT: Thank you. Mr. or Ms. Hyatt.

13 MR. VANDERGRIFF: Your Honor, we've  
14 received an email. We being staff and OPC,  
15 received an email from Shelly Hyatt stating  
16 that Rochelle Hyatt would not be here today.  
17 We do have a list of their dates.

18 THE COURT: Yes, I do as well. Thank you  
19 Mr. Vandergriff. And then for McGinley. Is  
20 it Cross Creek Farms (Phonetic)?

21 MS. BELL: Yes, Your Honor, it's  
22 Stephanie Bell here from Ellinger Bell. My  
23 information is on the record.

24 THE COURT: Thank you. So this was a  
25 call to --

1 MS. WHIPPLE: Judge Fewell?

2 THE COURT: Go ahead.

3 MS. WHIPPLE: Judge Fewell?

4 THE COURT: Yes.

5 MS. WHIPPLE: Pardon me for the  
6 interruption. This is Peggy Whipple. I had  
7 some technical issues when you asked me to  
8 enter appearance, but I am here on behalf of  
9 the Missouri Electric Commission, and our  
10 contact information is also on record, sir.

11 THE COURT: Thank you. I brought  
12 everyone here for determining an evidentiary  
13 hearing. I had asked initially for the  
14 parties to provide dates through, I believe,  
15 October, and I got one. And then we  
16 unfortunately needed to reschedule it from  
17 that day. Then I asked for further available  
18 dates from each of the parties, and there  
19 wasn't a single day that the parties were  
20 available through November -- totally  
21 available.

22 However, November 13th had availability  
23 from all parties except for one. Ms. Bell, I  
24 think you're the only party that's unavailable  
25 that day. In your response, you stated that

1     there was a trial scheduled that week.  What  
2     day or days that week is your trial scheduled  
3     for?

4           MS. BELL:  Just one moment, Your Honor.  
5     Let me check that.  You're saying November  
6     13th?

7           THE COURT:  Yes.

8           MS. BELL:  Let's see here.  It's  
9     scheduled in Cole county on the 12th and the  
10    13th.  We're hoping to finish it in two days.

11          THE COURT:  Are you the only attorney at  
12    your firm?

13          MS. BELL:  There's just two of us, Your  
14    Honor.

15          THE COURT:  Is there any other  
16    appearances that day for the other council?

17          MS. BELL:  There is not, but this is a  
18    case where it's going to take two people to be  
19    there.

20          THE COURT:  Well, I think I'm going to  
21    schedule it for the 13th, and we'll see how  
22    things play out, because all the other parties  
23    are available that day, and we're trying to  
24    accommodate as many parties as possible, but  
25    your clients available on all the other

1 parties are. And there's two of you, so.

2 And you said that your other council  
3 doesn't have anything that day, so I'm going  
4 to schedule it for the 13th of November,  
5 because I think all the parties were otherwise  
6 available. While we're still here, I want to  
7 get into Mr. Harding's filing. Any other  
8 parties can excuse themselves if ATXI and Mr.  
9 Harding can remain.

10 There was a request for a discovery  
11 conference --

12 MR. FOSCO: Your Honor.

13 THE COURT: Yes.

14 MR. FOSCO: I didn't mean to interrupt,  
15 but if I could address you with some other  
16 issues before we dismiss everyone else.

17 THE COURT: Sure.

18 MR. FOSCO: So, as part of your earlier  
19 procedural order Your Honor, we had discovery  
20 -- there's a couple of issues. We had  
21 discovery turnaround times that I think were  
22 based on having a hearing in September, and  
23 it's now set for November 13th. So I think we  
24 would like to, you know, retain the -- at  
25 least the 10 days and five business days

1 instead of the, you know, five days.

2 I forget if it was two or three business  
3 days to object. Would be one thing. And then  
4 secondly, we did want to -- originally the  
5 schedule when we had the September date, Your  
6 Honor, the company compromised so that we  
7 could keep that date and did not insist on  
8 having the final filing under the commission's  
9 rules, Your Honor, regarding hearings, it  
10 provides that the order of testimony typically  
11 is for the company to both open and close.

12 And so we would request that we set  
13 another date, you know, 10 days after or after  
14 October 28th to let the company have any  
15 necessary surrebuttal to new information  
16 that's filed and other parties surrebuttal.  
17 And then the third thing we wanted to bring up  
18 at this procedural conference was, the conduct  
19 of the hearing according to the commission  
20 rules part -- we have a number of pro se  
21 interveners, Your Honor, that, that don't have  
22 counsel, but the commission rules do provide  
23 that you're not allowed to supplement your  
24 direct or rebuttal testimony except for  
25 matters that come up at the hearing.



1           So we just thought it might be good that  
2           if you agree with that, if you could confirm  
3           that that's the expectation that the hearings  
4           are for cross examination, not for new direct  
5           or rebuttal.

6           MS. MARTIN: The OPC objects because the  
7           entire reason -- we had a whole conversation  
8           about how the company should not have  
9           surrebuttal that is due after the other  
10          company or the other parties. And it seems  
11          even more concerning if we're going to say you  
12          can't supplement what you are saying at the  
13          hearing -- what your testimony says at the  
14          hearing.

15          And as the OPC has said in the past  
16          testimony, it doesn't specify that testimony,  
17          both verbal and written, the company gets to  
18          begin and end testimony. That is a different  
19          reading than the OPC has had. And that was  
20          another concern that we had had while making  
21          this procedural schedule that we discussed at  
22          that time.

23          So I don't think it's appropriate to  
24          change that aspect now since that was a  
25          specific issue that we addressed when we made

1 the procedural schedule originally.

2 MR. FOSCO: Your Honor, as I indicated,  
3 that was something the company to keep that  
4 schedule -- we were willing to do to keep that  
5 schedule. But now we're not having a hearing  
6 in September, not even in October, but in  
7 November. And I, you know, we strongly  
8 disagree with the office of public counsel.

9 It's very traditional for the party with  
10 the burden of proof, the applicant in this  
11 case to open and close. We know that there  
12 are schedules where there's different  
13 accommodations made by agreement. But I would  
14 submit to you that it's both under the  
15 commission's rule. I mean, I think that's a  
16 very constrained reading of the rule.

17 It's in a section called hearings, but it  
18 clearly specifies who opens and closes. So we  
19 are requesting Your Honor, neither OPC nor  
20 staff file direct. We don't know if they're  
21 going to file surrebuttal. And there's been a  
22 lot of discovery going on. So we expect there  
23 will be new material that we will not have had  
24 a chance to respond to.

25 And as the company party with the burden

1 of proof, we strongly feel we should have an  
2 opportunity to do that. And the schedule now  
3 accommodates it with the date that you've set,  
4 Your Honor.

5 MS. MARTIN: If you believe that is  
6 necessary to both open and close, then I would  
7 suggest that we do not limit what the  
8 interveners are able to discuss during the  
9 hearing, given that the interveners both are  
10 not as well versed in the -- how the hearing  
11 would progress and how they should write their  
12 testimony.

13 And also because if you're getting both  
14 the -- to start and end the hearing, I think  
15 that you should not also be able to do that at  
16 the time of written testimony, especially if  
17 you're going to limit it.

18 MR. FOSCO: Your Honor, parties always  
19 have the right to cross. They can cross  
20 examine any of our witnesses about anything  
21 that's in their testimony that's relevant, but  
22 --

23 MS. MARTIN: Right. But if there are  
24 responses that they have.

25 MR. MATTHEWS: Your Honor, this is Neil

1 Matthews. I certainly want to retain whatever  
2 interventionist rights I have to respond to  
3 anything that came up in the hearing that I  
4 thought was inaccurate representation of  
5 either my position or what's been presented at  
6 it. And it shouldn't be just only one party  
7 that does that.

8 So I think I'm agreeing, if I'm following  
9 this correctly, with what Hannah has just  
10 said.

11 THE COURT: Well, when I'm looking at the  
12 schedule, it says optional for testimony. I  
13 think that parties will be able to cross each  
14 other at the time of the hearing for any  
15 additional evidence that's provided. I mean,  
16 we -- it was scheduled as optional, and I  
17 didn't order that directly. That was what the  
18 parties agreed to.

19 It was a joint procedural schedule  
20 unobjected to. So that would indicate to me  
21 that the idea was that there may be additional  
22 testimony provided at the hearing itself. I  
23 don't believe it's necessary to give  
24 additional time for surrebuttal. I think it's  
25 proper to have it on the 28th of this month.

1 Everyone's testimony that's been filed so far  
2 has been filed as the deadlines occurred.

3 I don't know that surrebuttal, again, is  
4 anything beneficial to this. You'll be able  
5 to provide additional points at the hearing.  
6 While it's mostly going to be limited to  
7 cross, I think that's the expectation and how  
8 these hearings usually go. Again, the parties  
9 agreed to optional testimony to be filed in  
10 each of these areas.

11 That said, I know that we've had errata  
12 sheets filed. If additional testimony was  
13 provided, those are usually again, on stronger  
14 deadlines that aren't optional. So I think if  
15 parties want to move to file additional  
16 testimony, they can file their motion and I'll  
17 rule on it for discovery requests. I don't  
18 think it's necessarily problematic to push  
19 that back if the parties would like to and  
20 agree to that.

21 And I think it ultimately may end up  
22 being a -- if the parties can jointly agree on  
23 a new procedural schedule. Since we are kind  
24 of moving past even the latest date that was  
25 provided in it. And again, if we want to move

1 the surrebuttal testimony date in that, I  
2 think that's fine as long as the parties are  
3 agreeing on it, especially with discovery  
4 requests being pushed back.

5 But I don't know. Go ahead, Mr. Fosco.

6 MR. FOSCO: No, Your Honor, if you're,  
7 you know, given your ruling that you're going  
8 to keep the schedule as is unless we file a  
9 motion. The discovery timelines change after  
10 surrebuttal, and that was based on the  
11 evidentiary hearing being a month later. So I  
12 guess I still would request that we keep the  
13 10, we not change it after surrebuttal, given  
14 the time to answer.

15 They could still issue them that we  
16 extend the time to answer to what it was at  
17 this time, which is 10 days, five days.

18 THE COURT: Are there any objections to  
19 that?

20 MS. MARTIN: The OPC doesn't object to  
21 that at all. And I would request that we all  
22 have that expectation of 10 days and that  
23 expectation, even in the DRS themselves,  
24 doesn't get shortened by the wording of the  
25 questions.

1 THE COURT: Sure. I can issue an amended  
2 order for that purpose. I don't mind doing  
3 that. Is there any other issue that the  
4 parties collectively need to discuss at this  
5 time?

6 MR. STEINMEIER: Your Honor.

7 MR. FOSCO: I'm sorry, I did have one  
8 more, but go ahead.

9 MR. STEINMEIER: Bill Steinmeier, there's  
10 no possibility the commission would reconsider  
11 its postponement of the September 28th's  
12 hearing. I can tell you that when I was  
13 chairman of the Commission, I had very little  
14 idea about how difficult it can be, is proving  
15 true in this case for the parties to a  
16 proceeding like this to establish a procedural  
17 schedule that works for everybody.

18 November 13th is a long way off. This  
19 case is already moving very slowly on a matter  
20 that's going to affect thousands of people and  
21 millions of dollars. And as a solo  
22 practitioner, I'm rather sensitive to the  
23 concerns that Ellinger and Val are expressing.  
24 The commission, of course, can read the  
25 record.

1           The commissioners don't have to be  
2 present in the hearing room. And unlike the  
3 time when I served there, the commissioners  
4 now can even watch a video recording of the  
5 hearing, not just read a printed record. It  
6 was difficult to come up with September 28th,  
7 and it's proving harder to find a replacement.

8           THE COURT: I can discuss with the  
9 advisors and see what their take on it is, but  
10 there's been a strong push to move it to a  
11 more comidable day, but I haven't canceled it  
12 yet, so I can do that and see where the  
13 positions stand, and the preference of the  
14 parties, I assume, is to keep it on the 26th?

15           MR. FOSCO: That's the preference of  
16 ATXI, Your Honor.

17           MS. MARTIN: That's certainly the  
18 preference of Missouri Electricity Commission,  
19 Your Honor.

20           THE COURT: Okay.

21           MS. BELL: And certainly the preference  
22 of Ellinger Bell as well.

23           THE COURT: I can address that. And it  
24 may resolve all the procedural schedule issues  
25 we have. I will send out a confirmation if



1 that ends up being the case or order otherwise  
2 what the hearing date will be.

3 MR. HARDING: Your Honor?

4 THE COURT: Yes.

5 MR. HARDING: Can I get some clarity,  
6 please? This is Mark Harding. So originally  
7 we're having this conference today because  
8 there was a problem, as I understand it, from  
9 the commission schedule. Is that correct?

10 THE COURT: Yes. There was a conflict  
11 with the commissioners on being able to have  
12 that day.

13 MR. HARDING: And now we're going to --  
14 you're going to go back and revisit. See if  
15 something could be arranged in that regard?

16 THE COURT: Yes.

17 MR. HARDING: Okay.

18 THE COURT: Yeah. If the party's  
19 preference is to have it on the 26th, I think  
20 that's the simplest idea. Again, as  
21 mentioned, we'll have to essentially redo the  
22 procedural schedule since a lot of these dates  
23 are nullified if we push it out that far.

24 MR. HARDING: Your Honor, I assumed that  
25 that had already been exhausted, but now I

1 understand. Thank you.

2 THE COURT: Thank you, Mr. Harding. With  
3 that, if there are no other issues the parties  
4 need to address, I again would like to go into  
5 the discovery dispute, if we can handle that  
6 today. Is there any objection to that, Mr.  
7 Fosco?

8 MR. FOSCO: No, Your Honor, and I think  
9 you can resolve it. I had been speaking with  
10 Mr. Harding indicating I had a death in the  
11 family. I was not able to talk to him that  
12 week. I think there were some -- we were  
13 still considering this, and he filed his  
14 filing.

15 But after giving it additional  
16 consideration while we think our objections  
17 are valid in the issue. In the interest of  
18 reducing discovery issues, we will produce the  
19 two images which were part of an email, which  
20 he's requesting.

21 THE COURT: Does that resolve your  
22 concern Mr. --

23 MR. MATTHEWS: Your Honor.

24 THE COURT: Go ahead.

25 MR. MATTHEWS: Your Honor, this is Neil

1 Matthews again, and I made the assumption that  
2 we -- that this had been canceled on the 26th,  
3 and that is no longer available for me. So  
4 September 26th, that we'd scheduled the -- if  
5 I understand this, you're wanting to go back  
6 to that date (Indiscernible) it had been  
7 canceled.

8 THE COURT: Potentially, I hadn't  
9 canceled it yet. Was still the hearing date  
10 that was set.

11 MR. MATTHEWS: Yeah, it's no longer  
12 available for me at this point in time. I  
13 don't think you'd want to query the  
14 interveners to see whether hiatus or anyone  
15 else would be available or they've changed  
16 that anyway.

17 THE COURT: I'll take that into  
18 consideration Mr. Matthews. Mr. Harding --

19 MR. MATTHEWS: Thank you very much.

20 THE COURT: Mr. Harding, does that  
21 resolve the issue for discovery that you had?  
22 If they provide --

23 MR. HARDING: Yeah, if there's no  
24 objection on Mr. Fosco's part of that data  
25 request, I believe had four questions. And I

1 would like the entirety of that data request  
2 addressed. I believe, and I'm reading off of  
3 memory right here. But I believe it was  
4 labeled 18C. The C was for confidential. But  
5 anyway, that's how it's identified. Is  
6 Harding 18C. That's how it's identified.  
7 Date ATXI. And I believe it was four  
8 questions. And I would like a response if he  
9 doesn't have an objection on all four  
10 question.

11 MR. FOSCO: Well, beyond producing the  
12 two images Your Honor -- that's the only thing  
13 I understood that he was seeking. Beyond  
14 that, no, we're not in agreement and stand our  
15 objections. And if that's the case, Your  
16 Honor, then we would -- we need to talk more  
17 because all of these go beyond the scope of  
18 his intervention.

19 You know, he's asking about other  
20 landowners, not him. This doesn't directly  
21 impact his property in any way. None of the  
22 Do does. So if that's where we're at, then  
23 no, we are contested.

24 MR. HARDING: This directly goes to the  
25 question of the reroute -- the justification

1 for the reroute. And all of my questions in  
2 that. And all of my questions, frankly, all  
3 point to how the reroute was arrived at and  
4 everything surrounding the change from the  
5 Do27 to the Do28. And that's what those  
6 questions pertain to.

7 MR. FOSCO: And Your Honor, we've never -  
8 -

9 THE COURT: If this is what was filed,  
10 Mr. Harding, I mean, it seems like routing  
11 issues in what was requested. I understand  
12 Mr. Fosco, you said you're objecting on the  
13 grounds that it's another individual and  
14 doesn't affect Mr. Harding's land.

15 MR. FOSCO: Yes. I mean, these are  
16 contacts from another individual that were not  
17 part of his property or they're not near his  
18 property. I was trying to look at his DR, I  
19 thought the focus of the request was for the -  
20 - I thought we had answered it quite frankly,  
21 Your Honor, other than the maps. But for the  
22 images.

23 THE COURT: To me, it looks like it's  
24 attachments to an email or is it multiple  
25 emails? Mr. Harding?

1 MR. HARDING: Yeah. The source of my --  
2 of that particular data request. I would  
3 point to ATXI's response to an MPSC request,  
4 that being 0025.0. Again, I'm going off of  
5 memory, but I believe that's correct. And in  
6 that, that's responding to requests from  
7 staff, from PSC staff to produce all of the  
8 exchange that happened around the open house  
9 period of time and through a designated date  
10 period.

11 And this is some exchange that happened  
12 between one particular person who was  
13 instrumental in the line move that's mentioned  
14 in James Nixlif's direct check, etc. And they  
15 are referenced here. They were in  
16 correspondence with an ATXI consultant on the  
17 8th and also on the day of the hearing of the  
18 open house, the 9th of April.

19 And so that's what -- that's the source.

20 MR. FOSCO: So part of the problem is,  
21 Your Honor, is the question is he -- well, the  
22 full email exchange was produced as in a  
23 response to a staff data request with activity  
24 notes.

25 MR. HARDING: It's a part of the docket,

1 Your Honor, as I've referenced at ATXI's  
2 response to that request made by PSC staff.

3 THE COURT: It's not available to me.  
4 Just so you're aware, Mr. Harding, I can't see  
5 other than what you've filed because I  
6 shouldn't be involved to a great deal in  
7 discovery unless there's an issue, because  
8 this is evidence for you to request from each  
9 other and then maybe provide to me at the  
10 hearing. I just want to make that clear. But  
11 I'll take it under advisement.

12 MR. HARDING: Your Honor, just so you're  
13 aware, I wasn't aware that that was going to  
14 be addressed today, so I'm not fully prepared.

15 THE COURT: Sure. No, I understand. If  
16 you both would like to have another setting  
17 for that. We can do that. I'm indifferent.  
18 I think it'd be best to get it today. But  
19 regardless, again, I think I'll take it under  
20 advisement. I've heard from you both on what  
21 the issue is and the objections to it, and I  
22 will issue an order.

23 MR. HARDING: Your Honor, may I -- may  
24 you provide me how I should make that -- the  
25 data request and the reference of the source

1 of information that I use to form that data  
2 request. Should I provide that to you in some  
3 way?

4 THE COURT: I think this is fine. What  
5 you provided me so far, that's kind of how it  
6 would normally go. If there's an issue, I  
7 can't give you legal advice.

8 MR. FOSCO: Your Honor makes some other  
9 comments. The problem with the other portions  
10 of the question is that they misstate facts,  
11 Your Honor. They're incorrect. Scott -- Mr.  
12 Harding makes assumptions. He asked, did our  
13 consultant make any -- provide any other maps,  
14 when he didn't provide any to begin with? So  
15 we can't answer a question that's based on  
16 facts that are incorrect.

17 THE COURT: So you don't have the  
18 information that's being asked.

19 MR. FOSCO: Well, the question, it's  
20 worded improperly, right? I mean, it assumes  
21 incorrect facts, so we can't do that. Mr.  
22 Harding assumes that Mr. Gross sent some map  
23 to April Healey when he didn't.

24 THE COURT: Okay.

25 MR. HARDING: I'm okay with -- if that's



1 the response that ATXI wants to provide, then  
2 he can easily say, we didn't provide any maps  
3 to April here.

4 MR. FOSCO: That wasn't the question,  
5 Your Honor, that he asked. He has to ask a  
6 proper question, and he didn't ask that.  
7 Instead, he made assumptions and he asked a  
8 question to which the answer is the question  
9 makes no sense to us. So if we're going to  
10 answer it, that would have to be our answer  
11 Your Honor. And that was the objection. It's  
12 vague and ambiguous. Assumes facts not in  
13 evidence.

14 MR. HARDING: I'd be happy to clarify the  
15 question.

16 MR. FOSCO: I asked for a ruling, Your  
17 Honor, that you take it under -- we're happy  
18 to have you take it under advisement. And,  
19 and we believe his request should be denied  
20 because our objections were valid.

21 THE COURT: Again, I've heard both sides.  
22 I'll take it under advisement and get an order  
23 out this week. And I will let the parties  
24 know about the hearing date and how we will  
25 proceed in the case. Your Honor a super

1 fruitful meeting, unfortunately. But I think  
2 we're hopefully kind of on the same page as  
3 with this -- Yes, Mr. Harding.

4 MR. HARDING: Just to clear up, is it  
5 going to be possible to go ahead and provide.  
6 He referenced two maps. Mr. Fosco reference  
7 two maps. Would you be able to go ahead and  
8 rule on that part of my request and just  
9 provide the two maps that Mr. Carmen -- that  
10 Mr. Fosco said he had no objection to.

11 THE COURT: I would recommend to the  
12 parties to resolve things outside of  
13 conferences and issues before the judge if  
14 they can.

15 MR. HARDING: Thank you, Your Honor.

16 THE COURT: Thank you everyone. If  
17 there's nothing else, then I will excuse the  
18 parties. I hope everyone has a good day.

19 MR. FOSCO: Thank you, Your Honor.

20 MR. STEINMEIER: Your Honor, if I may,  
21 there is one other issue here.

22 THE COURT: Yes, Ms. Steinmeier. It's  
23 all right.

24 MR. STEINMEIER: Sorry to chime in so  
25 late. The interveners direct testimony,

1 several of them were filed as entirely  
2 confidential. We communicated with the  
3 interveners that did file their testimony as  
4 entirely confidential. There's no public  
5 version redacting only the information that  
6 they feel is confidential.

7 They're fully confidential. We did  
8 communicate with the interveners that did do  
9 so and asked them to reconsider filing a  
10 public version, redacting only what they  
11 deemed was actually confidential rather than  
12 confidential in their entirety.

13 THE COURT: And is this why there was  
14 something filed on the 19th?

15 MR. STEINMEIER: Yes, I believe Ms. Hyatt  
16 -- Ms. And Mr. Hyatt filed this morning a  
17 revised version with the public version only  
18 redacting the items that qualify as  
19 confidential. So we made a request of some of  
20 the interviewers that did so to file a public  
21 version, redacting only what is or qualifies  
22 as confidential.

23 Ms. Hyatt filed her -- corrected her  
24 amended filing with the public version. Mr.  
25 Hyatt, I'm not sure where he stands on the

1 issue, if he intends on filing something  
2 updated with the public version, I think that  
3 qualifies as confidential. And I think Mr.  
4 Matthews is considering it as well.

5 MS. MARTIN: I did have a question  
6 actually about that because -- and I  
7 understand, I mean, the OPC is kind of a  
8 bulldog about making sure that if you are  
9 providing confidential information, you  
10 provide that cover sheet and things like that.  
11 And I think that we could work with the  
12 interveners, if you would like, Judge, to  
13 assist them with making public and  
14 confidential versions.

15 I do also wonder one of the things that I  
16 was thinking is if we are -- if customer  
17 specific information is a reason for something  
18 to be deemed confidential, are we -- and by  
19 we, when you're considering testimony being  
20 confidential, would it be appropriate or  
21 inappropriate to deem more of the information  
22 as confidential since these are technically --  
23 specific customers.

24 These are for specific customers. That  
25 was something I didn't -- I wasn't sure how to

1 handle. But I'm trying to make sure that we  
2 are not coming to you with these issues as  
3 much as possible, so.

4 THE COURT: Sure. And again, that's  
5 understandable. I don't think it's a problem  
6 to have their information be totally  
7 confidential. A lot of it is specific to  
8 their property and I think it'd be very  
9 difficult to go through and have to redact  
10 everything. I think they redacted pictures,  
11 if I remember right on what they mostly  
12 redacted, and then some evidence.

13 If the parties are unopposed to that, I  
14 think it's fair for them to have confidential  
15 filings for each of the interveners. I think  
16 that was the understanding that I had -- I  
17 assumed that they were confidential before. I  
18 think that's how they're listed.

19 MR. FOSCO: Yeah. Your Honor, like I  
20 said, I think Ms. Hyatt addressed her issues.  
21 She did exactly what the rule requires now.  
22 But Mr. Harding has designated all of his  
23 testimony as confidential. Nothing is public  
24 and a lot of it has nothing to do with his  
25 property or his personal information. And Mr.

1 Matthews indicated he was still considering.

2 And I think there is material in both of  
3 their tests -- again, we're just looking for  
4 them to explain why they're claiming it  
5 confidential and then having the public part.  
6 Because at this point we filed all of our  
7 testimony and rebuttal as confidential because  
8 they had blanket designations and it wasn't  
9 easily separable.

10 We would intend to file a public version,  
11 a different public version of our rebuttal  
12 testimony after -- if they make designations.  
13 And then Your Honor will make the hearing and  
14 briefing very difficult if we can't say  
15 anything in the brief that's not confidential.

16 THE COURT: That's fair, sir.

17 MR. FOSCO: And nor will your order be  
18 able to talk about stuff that's confidential.  
19 So I do think this is very important. That  
20 stuff that's -- again, they haven't designated  
21 or explained specifically, Ms. Hyatt has, but  
22 the other interveners have not yet. The other  
23 nonrepresented intervener, landowner  
24 interveners have not indicated anything as  
25 public.

1 THE COURT: I appreciate that. That's a  
2 very valid point. I wasn't considering it. I  
3 think if --

4 MR. HARDING: Your Honor.

5 THE COURT: I'm sorry, Mr. Harding.  
6 Okay, you may go ahead.

7 MR. HARDING: Yeah, I would speak to that  
8 if you would allow. I did it out of  
9 convenience and I was trying to follow what I  
10 -- I have seen multiple items marked as  
11 confidential in their entirety. And that was  
12 my approach. Is to not just for self  
13 protection, I guess, and the protection of  
14 others to designate everything as  
15 confidential.

16 I can do that. Again, I want to do  
17 whatever you rule, Your Honor. So if I need  
18 to be -- as long as I get proper instruction  
19 from the proper authority, I will do that. I  
20 didn't perceive Mr. Fosco giving me --  
21 suggesting that I needed to do these things on  
22 a confidential.

23 I didn't follow his instruction because I  
24 didn't feel like that was the proper authority  
25 to be instructing me.

1 MR. FOSCO: And Your Honor, with all due  
2 respect, I wasn't -- we sent a letter to all  
3 the interveners saying that we had honored  
4 their blanket designations and pointed them to  
5 the commission's rule. That's what I --  
6 that's all we did is point them to the  
7 commission rules saying that if material's  
8 confidential, under the rule, should be a  
9 cover sheet indicating which section is being  
10 relied upon and that a public version be  
11 filed. That's all I did, Your Honor was point  
12 that out.

13 THE COURT: Yeah, no, I appreciate that,  
14 Mr. Fosco. I think that's proper, is to have  
15 a public in the confidential designation  
16 specifying what areas are confidential. It  
17 would make the hearing very difficult if  
18 everything is listed as confidential. We do  
19 record these, and they're publicized, and it  
20 would be very odd to have an entire hearing be  
21 essentially confidential.

22 MS. MARTIN: Thank you, yeah.

23 THE COURT: So I agree with -- Ms. Martin  
24 is willing to work with the landowners to help  
25 them try to determine what should be or



1 shouldn't be confidential. It may be  
2 piecemealing just the same, but I think that  
3 that's the proper approach in consideration of  
4 the hearing itself. And I believe that that's  
5 been listed out as -- I don't remember exactly  
6 what rule it is.

7 MS. MARTIN: And judge, I did -- I might  
8 see if it would be okay. And this kind of  
9 goes along with what I was saying regarding  
10 helping with confidentiality. I'm looking at  
11 Ms. Hyatt's testimony, and she is very open  
12 with some things that I'm a little worried,  
13 just -- her house address and things like  
14 that.

15 So if it would be okay for me to check  
16 with her and make sure she's comfortable with  
17 having that information.

18 THE COURT: Sure.

19 MS. MARTIN: I think I just worry that  
20 since they're not used to all of the different  
21 types of confidentiality. I do want to --  
22 with the testimony that she provided today,  
23 check with her, and then we can assist her if  
24 she wants to actually do more redactions and  
25 maybe remove what is currently listed as

1 public.

2 THE COURT: Yeah, I can discuss with the  
3 data center, if necessary, to remove it as  
4 well. And I think just advising, I think I  
5 said that, unfortunately, I believe, Mr. and  
6 Ms. Hyde, or not present, but each of you as  
7 landowners, since I did make that ruling, that  
8 it equates landowner information to customer  
9 specific information, you are the owner of  
10 that information is yours to release or not.

11 And that's the point that Ms. Martin is  
12 making, that you -- I hope that you are aware  
13 of that. I think I have mentioned it before  
14 in one of my orders or in a conference. And  
15 so if you're willing for that to be public and  
16 you have no issue with it, I don't think that  
17 there's a necessity to further complicate  
18 things by filing another testimony.

19 But I do think that if you're unaware of  
20 that, that is how this works. You own your  
21 information and you essentially waive it when  
22 you're filing it. So I don't have an issue  
23 with going back and checking with everyone,  
24 since a lot of these interveners are  
25 unrepresented and may not be fully aware and

1     advised of the rules.

2             I do believe that I've addressed it  
3     somewhere and I apologize if I've not. I  
4     believe I did. Whenever we went over this  
5     information. It was a month ago. But I do  
6     want the parties to be aware of that, that it  
7     is your right to waive. So be conscientious  
8     of what you file. I do think that I was under  
9     the impression before as well that everything  
10    was going to be confidential.

11            I understand the concerns with leaving it  
12    confidential. I think that would complicate  
13    the hearing tremendously and that they should  
14    be revised and supplemented or however the  
15    parties would like to treat it. I think Ms.  
16    Hyatt just refiled hers with certain things  
17    redacted. I do think that's an appropriate  
18    path forward. Okay.

19            If Ms. Martin is willing to work with  
20    people -- Go ahead Mr. Matthews.

21            MR. MATTHEWS: Yeah, I received this from  
22    Mr. Fosco on August 15th at 5:36 p.m. He gave  
23    me the deadline of yesterday on a complex  
24    issue that I was not fully apprised. I very  
25    much appreciate this conversation on the

1 confidentiality. I believe this was due on  
2 the 14th, and it certainly -- the direct  
3 testimony was actually back in July.

4 So I file an objection on just having one  
5 weekend to try to sort this out. I don't  
6 know, when was that exactly? Is there a date  
7 on when they file? Was this filed on the 14th  
8 or was it filed on the 15th when these --

9 THE COURT: There was not an official  
10 filing by Mr. Fosco.

11 MR. MATTHEWS: Okay.

12 THE COURT: Not to speak for him  
13 necessarily, but it was probably to prevent  
14 there being an extra conference and just  
15 telling the parties, "hey, can you resolve  
16 this as quickly as possible?" Is, I assume,  
17 the intent.

18 MR. FOSCO: That was the intent Your  
19 Honor. We were concerned that people might  
20 have thought our filing as a blanket  
21 confidential was problematic, so we felt an  
22 obligation to ask the interveners if they  
23 intended to have that blanket designation. I  
24 apologize if that felt Mr. Matthews to be  
25 rushed, but we were -- it was a request which

1 he was free to comply with or not.

2 And we were just seeking to reach  
3 agreement on what was confidential. As I  
4 said, we opted to protect everything with the  
5 blanket designations and not say, since they  
6 didn't -- since the rule was technically not  
7 followed. We didn't make any judgment about  
8 that. We did protect it at all, and we're  
9 seeking to reach an agreed resolution, so.

10 And then we were also concerned with it.  
11 At this point, we don't have the hearing date.  
12 The hearing date's not -- well, it may be the  
13 26th, but we were concerned with the hearing  
14 coming up, to getting this resolved so that we  
15 could get the appropriate information to mark  
16 our testimony appropriately.

17 THE COURT: Ms. McGinley, you have your  
18 hand raised. Is there something you'd like to  
19 add? And your counsel is present.

20 MS. MARTIN: Ms. McGinley, if you're  
21 trying to speak, I'm not at least able to hear  
22 you. I just wanted to make sure you knew.

23 THE COURT: It's star six. If you're  
24 appearing by phone, I believe. Unmute  
25 yourself.

1 MS. MARTIN: That accidentally muted her.  
2 Is it possible that you're phone itself is  
3 muted? If you're calling, that is possible as  
4 well. I didn't know if you're aware.

5 THE COURT: Ms. Bell, do you know of  
6 anything that your client would like to  
7 address today?

8 MR. HARDING: I know that on -- you can't  
9 click on the unmute. I'm calling on my cell  
10 phone, and you can't click on the unmute on  
11 the screen. You have to click on the unmute  
12 down at the bottom of your phone. That was a  
13 mistake that I made. So just FYI.

14 THE COURT: Thank you for that  
15 instruction. Ms. Bell, is there anything that  
16 you're aware of your client wanting to  
17 discuss?

18 MS. BELL: No, obviously, we'll have to  
19 discuss my availability, and we'll file  
20 something if Your Honor chooses to move the  
21 hearing date.

22 THE COURT: Well, I apologize if there's  
23 any issue technologically. Ms. McGinley,  
24 please discuss with your council if there's  
25 anything else you'd like to address, and she

1 can make appropriate filings. Thank you,  
2 everyone. Sorry. I anticipated maybe a  
3 shorter meeting today.

4 Again, we've at least found a way forward  
5 and some progress and hopefully resolving the  
6 confidentiality thing and finding a hearing  
7 date. I will let everyone go if there's  
8 nothing else to discuss.

9 MS. MARTIN: I do have one quick thing.  
10 It's pretty minor, but I did notice that it  
11 looks like ATXI three of their testimony, Sam  
12 Morris, James Nicholas and Leah Detmers, were  
13 actually filed late. So if we could just get  
14 a quick filing, it's more for process than  
15 anything, but since they were filed late, if  
16 we could get a request to accept late filed  
17 testimony, I would appreciate it.

18 MR. FOSCO: Yeah, we were dealing, quite  
19 frankly, Your Honor, with the confidentiality  
20 issues. I think some of our filings slipped  
21 past midlife, but yeah, I would make then a  
22 request that you allow those.

23 THE COURT: Go ahead and file something  
24 Mr. Fosco. I appreciate the candor again and  
25 everything, but even the first of the filings

1 was filed at 11:20, so --

2 MS. MCGINLEY: Your Honor, can you hear  
3 me now?

4 THE COURT: -- it was timed, but.

5 MR. HARDING: I would request that to be  
6 universal for all parties.

7 THE COURT: Yes. If anything's late, I  
8 would request that they file a motion to  
9 supplement or violate their testimony. I  
10 don't know that I need that exact filing for  
11 the landowner interveners who are going to  
12 need to revise their confidentiality issues.

13 If that can just be resolved as soon as  
14 possible so that the parties are all apprised  
15 of what can or cannot be available. I'll go  
16 ahead and issue an order requesting a deadline  
17 because what -- it's the 28th for surrebuttal?

18 MR. FOSCO: Yes, it is, Your Honor. It  
19 is the 28th, yeah.

20 THE COURT: Is the 22nd a good time to  
21 have the confidential designation resolved for  
22 the interveners.

23 MR. FOSCO: Your Honor, we were the only  
24 party that filed rebuttal, so it's not an  
25 issue for us that date or -- honestly, they



1 could have until the 28th, whatever they need.

2 THE COURT: The 28th. I think that's  
3 fine. If that's what the -- if there's no  
4 objection to that, I just want to make it  
5 simple for everyone to have their filings  
6 confidential where necessary. And to that  
7 same point, if we have the hearing, if it ends  
8 up being pushed out, then I think we can work  
9 with the parties on resolving confidential  
10 designations at a later date, if necessary. .

11 MR. HARDING: Your Honor, to that point  
12 also, I wouldn't want that to be -- the  
13 failure to provide the nonconfidential  
14 version. I wouldn't want that to be a reason  
15 not to provide responses to data requests.

16 THE COURT: Can you repeat that? I'm  
17 sorry.

18 MR. HARDING: Yeah. With regards to  
19 having that, for example, I need to prepare a  
20 public version of my testimony. I don't want  
21 that to be used by ATXI as a reason than not  
22 to respond to my data requests.

23 THE COURT: Those are separate issues.  
24 If there are any discovery disputes, I think  
25 the way that you filed on, I think, Friday, I

1 think that that's perfectly fine. Those are  
2 separate issues, though -- I don't. Again, I  
3 can't speak for the company. I don't believe  
4 that that will be held against you.

5 MR. HARDING: Maybe it's just the time,  
6 because I received the instruction at the same  
7 time that I had asked for this data request.  
8 I tried to resolve that with ATXI, this data  
9 request that is now before you.

10 THE COURT: I think it was convenient  
11 timing. I don't think it was any kind of  
12 malicious.

13 MR. HARDING: Thank you, Your Honor.

14 MS. MCGINLEY: Your Honor, this is  
15 Rebecca McGinley. I'm sorry. I finally  
16 figured out my volume problem.

17 THE COURT: What would you like to say,  
18 Ms. McGinley?

19 MS. MCGINLEY: So, as an intervener,  
20 obviously, I did hire representation because I  
21 didn't know anything about how to proceed on  
22 this kind of litigation. So I did hire  
23 Stephanie Bell and her firm to help me through  
24 this, and I'm so thankful. So my concern is,  
25 if you do move it to the November 13th date,

1 as she said, she's got a trial and she's not  
2 going to be there to be able to represent me.

3 So I'm just advocating to keep the trial  
4 date of September 26th because she and I are  
5 both available that date. So I just want to  
6 say that because I'm obviously needing and  
7 wanting representation, and her not being  
8 available on November 13th is not good for me.

9 THE COURT: I appreciate that, Ms.  
10 McGinley, and I will keep that in  
11 consideration as well.

12 MS. MCGINLEY: Thank you.

13 THE COURT: Thank you. Is there anything  
14 else to go over today? Okay. I will release  
15 the parties, and I was going to get an order  
16 out. I forgot which one. I'll review this  
17 recording and see what order I was going to  
18 issue today. I think I had one in mind. I  
19 can't remember what it is, but I will do that,  
20 and then I will let the parties know about the  
21 hearing date.

22 MS. MARTIN: As the OPC, as we have  
23 discussed. Judge, if this is okay, Mr.  
24 Matthews, Mr. Harding, and I will see if I can  
25 speak to Ms. Hyatt, just because there is some

1 stuff that I don't know if they want that they  
2 put in their public version. But I will work  
3 with you guys to resolve the issue of  
4 confidentiality today and tomorrow so that we  
5 can get that to you on time Judge.

6 THE COURT: Thank you, everyone. Have a  
7 good rest of your day.

8 MS. MARTIN: Thank you.

9 MR. FOSCO: Thank you. Your Honor.

10 MS. MARTIN: Thank you. Your Honor.

11 MR. HARDING: Thank you.

12

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15 (End of audio recording.)

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Joe Herman

Joe Herman

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