

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

In the Matter of the Application of Grain Belt Express            )  
Clean Line LLC for a Certificate of Convenience and            )  
Necessity Authorizing it to Construct, Own, Operate,        )  
Control, Manage, and Maintain a High Voltage, Direct        ) Case No. EA-2014-0207  
Current Transmission Line and an Associated Converter        )  
Station Providing an interconnection on the Maywood -        )  
Montgomery 345 kV Transmission Line                            )

**MATTHEW AND CHRISTINA REICHERT'S  
RESPONSE IN OPPOSITION  
TO GRAIN BELT EXPRESS CLEAN LINE LLC'S MOTION TO STRIKE  
REBUTTAL TESTIMONY OF CHRISTINA UMBRIACO**

Matthew and Christina Reichert (Reicherts) file this Response in Opposition to Grain Belt Express Clean Line LLC's (GBE's) Motion to Strike the Rebuttal Testimony of Christina Umbriaco. The Reicherts state the following:

**Introduction**

GBE's proposed transmission line will cross the Reicherts land within approximately 400 feet of their home. This line will have a negative impact on the value of the Reicherts' land due to both the interference with farming operations and proximity to their home. Their situation is not isolated. The proposed line consisting of segments B and D will be within 250 feet of 5 homes and within 500 feet of 61 homes.<sup>1</sup> The primary purpose of Christina Umbriaco's Rebuttal Testimony was to visually illustrate the negative impact that GBE's proposed transmission line will have on the Reicherts' property and, by inference, other landowners' properties.

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<sup>1</sup> Direct Testimony of Timothy B. Gaul, Doc. 8, Schedule TBG-2 at 118, 120.

This negative impact is relevant to the "Public Interest" prong of the five *Tartan*<sup>2</sup> criteria for granting a Certificate of Convenience and Necessity (CCN) and the possible conditions that the Missouri Public Service Commission (PSC) may impose on any CCN.

### **Argument**

#### **I. Mrs. Umbriaco's Testimony Provides and Supports Evidence Rebutting GBE's Claim of Economic Benefit Relative to the Public Interest Factor**

GBE has claimed that the proposed transmission line will provide an economic benefit to Missouri. They also claimed that this benefit includes increased property tax revenues.<sup>3</sup> GBE cites this economic benefit as one of the elements satisfying the Public Interest factor.<sup>4</sup>

Commission Rule 4 CSR 240-2.130(7)(C) states "rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case[.]" Christina Reichert's Rebuttal Testimony explains why the Reicherts disagree with GBE's claim of economic benefit and increased property tax revenue.<sup>5</sup> Mrs. Reichert references Mrs. Umbriaco's drawing to illustrate the major impact that the transmission line will have on the Reicherts and, by inference, other landowners.<sup>6</sup> GBE likes to quote that only 5 homes will be within 250 feet and 61 homes within 500 feet of the transmission line.<sup>7</sup> Those numbers are sterile. They do not show the real impact on those landowners. Mrs. Umbriaco's drawing is necessary to properly illustrate that impact. Therefore, Mrs. Umbriaco's

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<sup>2</sup> *In re Tartan Energy Company*, 3 Mo.P.S.C. 173, 177 (1994).

<sup>3</sup> Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity, Doc. 5 at Par. 19, Pg. 8. (*see also* Direct Testimony of Michael P. Skelly, Doc. 12 at 5:11-6:2, and Direct Testimony of David G. Loomis, Doc. 10 at 3:8-4:22).

<sup>4</sup> *Id.*

<sup>5</sup> Rebuttal Testimony of Christina Reichert, Doc. 180 at 5:9-10:10.

<sup>6</sup> *Id.* at 9:9-18.

<sup>7</sup> Gaul, Schedule TBG-2 at 118, 120.

Rebuttal Testimony is relevant to the "Public Interest" factor as supporting evidence that land values and, therefore, property taxes will be decreased by GBE's transmission line.

II. Mrs. Umbriaco's Testimony Provides and Supports Evidence for the Imposition of Conditions on the CCN

The Staff of the PSC worked jointly with all parties to develop the list of issues and witnesses to this case. The Staff filed the list with the PSC on October 27, 2014.<sup>8</sup> The second issue states:

2. If the Commission grants the CCN, what conditions, if any, should the Commission impose?<sup>9</sup>

GBE did not object to this filing by Staff or Issue No. 2. In fact, GBE's Statement of Position specifically addressed Issue No. 2.<sup>10</sup>

The Reicherts have asked for specific conditions in the event that the PSC grants the CCN.<sup>11</sup> One of those conditions requires GBE to locate the transmission line at least 1,000 feet from any residence.<sup>12</sup> Mrs. Umbriaco's Testimony illustrates the impact from locating the line within 500 feet of a residence. Mrs. Umbriaco's Testimony when combined with the other testimony about reduced property values provides demonstrative support to the Reicherts' request

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<sup>8</sup> List of Issues and Witnesses, Doc. 259.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> Position Statement of Grain Belt Express Clean Line LLC, Doc. 303 at 7-9.

<sup>11</sup> Matthew and Christina Reichert's and Randall and Roseanne Meyer's Statement of Position, Doc. 307.

<sup>12</sup> *Id.* at 4.

to locate the transmission line at least 1,000 feet from any residence. Therefore, Mrs. Umbriaco's Testimony is relevant to the issue of imposing conditions on the CCN.

### III. Mrs. Umbriaco is Qualified as an Expert Artist

GBE cites to *State v. Watling* to support their contention that Mrs. Umbriaco does not have "sufficient expertise and acquaintance" to provide her Testimony and drawing into evidence.<sup>13</sup> However, *Watling* never defines "sufficient expertise".<sup>14</sup> They refer to her professional history in the ophthalmology field and her pursuit of art as a hobby instead of a career. They conveniently omit the following statement about Mrs. Umbriaco's training when using the "side hobby" quote:

I always showed interest in art ever since I was a little girl. I studied photography, drawing, and painting all throughout high school and college from 2000-2003 (HS) and 2003-2008 (University of Utah). It has always been more of a side hobby rather than a career focus.<sup>15</sup>

They also omit that she has prepared 30 to 40 drawings since high school.<sup>16</sup> A recent drawing has been included in Exhibit A.

GBE also implies that Mrs. Umbriaco is not qualified to provide her drawing since she has not previously provided drawings for evidence in prior judicial, regulatory, or governmental

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<sup>13</sup> Grain Belt Express Clean Line LLC's Motion to Strike Rebuttal Testimony of Christina Umbriaco, Doc. 294 at 3.

<sup>14</sup> *State v. Watling*, 211 S.W.3d 202, 208 (Mo. App. 2007).

<sup>15</sup> Rebuttal Testimony of Christina Umbriaco, Doc. 183 at 2:5-9.

<sup>16</sup> *Id.* at 2:10-12.

proceedings. Statutory and case law does not support that implication. Section 490.065 of the Revised Missouri Statutes states:

In any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.<sup>17</sup>

There is no reference to prior testimony. In *Strong v. American Cynamid Co.*, the Court stated the following about qualifying as an expert:

For a witness to be qualified as an expert, it must be shown that by reason of specialized experience or education the witness possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or reaching correct conclusions.

*Whitnell v. State*, 129 S.W.3d 409, 413 (Mo. App. E.D. 2004). "If the witness has some qualifications, the testimony may be permitted." *Donjon*, 825 S.W.2d at 32-33. Significantly, the extent of an expert's training or experience goes to the weight of his testimony and does not render the testimony incompetent. *Id.* at 33.<sup>18</sup>

Also, the Court stated that testimony may be allowed if the witness has some qualifications.<sup>19</sup>

Those qualifications go to the weight of the testimony and not its admissibility.<sup>20</sup>

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<sup>17</sup> Mo. Rev. Stat. Section 490.065.1 (2013).

<sup>18</sup> *Strong v. American Cynamid Co.*, 261 S.W.3d 493, 513 (Mo. App., 2007) (citing *Whitnell v. State*, 129 S.W.3d 409 (Mo. App. E.D. 2004), and *Donjon v. Black & Decker (U.S.), Inc.*, 825 S.W.2d 31 (Mo. App. E.D. 1992)).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Finally, Mrs. Umbriaco is basing her drawing on direct knowledge of the Reicherts' property. She has been at the Reicherts' property three times over the last three years.<sup>21</sup>

Mrs. Umbriaco possesses superior knowledge by reason of her eight years of education in photography, drawing, and painting. Her artistic endeavors did not stop after graduating college. She has continued to paint and draw as time permits. At the very least, she has "some qualifications"<sup>22</sup> that enable her Testimony to be admissible. Therefore, her Rebuttal Testimony can be relied upon as expert evidence.

### **Conclusion**

Therefore, the Reicherts respectfully request that the PSC deny GBE's Motion to Strike Rebuttal Testimony of Christina Umbriaco and grant any other relief as appropriate.

Respectfully submitted,  
Law Office of Gary Drag

/s/ Gary Drag

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<sup>21</sup> Umbriaco at 3:4-6.

<sup>22</sup> *Strong*, 261 S.W.3d 493, 513.

**CERTIFICATE OF SERVICE**

I certify that true and accurate copies of this document were sent by e-mail on November 17, 2014, to all parties on the official service list for this case.

*/s/ Gary Drag*

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Gary Drag, MBN 59597

Attorney for Matthew and Christina Reichert  
and Randall and Roseanne Meyer

**Exhibit A**



