

Exhibit No.: _____
Issue: Easement Agreement
and Escrow Requirement
Witness: Christina Reichert
Type of Exhibit: Surrebuttal
Sponsoring Party: Matthew and
Christina Reichert
Case No.: EA-2014-0207
Date Testimony Prepared: October 14, 2014

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2014-0207

SURREBUTTAL TESTIMONY OF

CHRISTINA REICHERT

ON BEHALF OF

MATTHEW AND CHRISTINA REICHERT

October 14, 2014

1 **I. INTRODUCTION**

2 **Q: What is your name?**

3 A: Christina M. Reichert.

4 **Q: What is your occupation?**

5 A: Bed & Breakfast Proprietress.

6 **Q: What is your home address?**

7 A: 25589 Fort Orleans Avenue, Brunswick, Missouri, 65236.

8 **Q: Have you previously offered testimony in this case?**

9 A: Yes. I submitted Rebuttal Testimony on September 15, 2014.

10 **Q: What is the purpose for your Surrebuttal Testimony?**

11 A: I am offering surrebuttal testimony to the Rebuttal Testimonies of Daniel I. Beck
12 and Jeffrey M. Gray, Ph.D.

13 **Q: Have you read the Rebuttal Testimony of Mr. Beck?**

14 A: Yes.

15 **Q: What is the issue with respect to Mr. Beck's Testimony?**

16 A: Mr. Beck makes recommendations with respect to the Easement Agreement with
17 Grain Belt Express Clean Line LLC (GBE) on pages 16 and 17 and in Schedule DB-2 of
18 his Rebuttal Testimony. Those recommendations are inadequate to protect the rights of
19 Missouri landowners against a company with the legal and financial resources to force a
20 one-sided agreement upon the landowners. Even if the Public Service Commission
21 (PSC) accepts Mr. Beck's recommendations, the Easement Agreement is still a "blank
22 check" for GBE to the detriment of the landowners.

1 **Q: How are the recommendations inadequate?**

2 A: Mr. Beck failed to include recommendations for the following:

3 1. Specific time periods for repairing damage to the land, fences, and adjacent
4 structures.

5 2. Specific minimum notification period before entering the property.

6 3. Allowing the landowner to specify the location of temporary or permanent access
7 roads.

8 4. Detail requirements for mitigation of soil compaction, restoration of cropland,
9 removal of temporary roads, fertilization, soil conservation, repair of drainage tiles, and
10 removal of construction debris.

11 5. Requirements for moving or removing towers such as the complete removal of
12 concrete footings and pads and mitigation of damage caused by moving or removing
13 towers.

14 6. Indemnification of the landowner for all damages caused by the use or existence
15 of the transmission line.

16 7. Retention of existing surface or sub-surface water and mineral rights by the
17 landowner.

18 8. Consultation with the landowner before trimming trees outside of the Easement
19 property.

20 9. Compensating the landowner for the disruption of normal farming practices
21 during construction, repair, etc.

22 10. Replanting trees on a one to one or two to one basis for the trees removed by

1 GBE.

2 11. Use of an independent Agricultural Inspector to ensure GBE's compliance with
3 the Easement Agreement.

4 12. Extending mitigation requirements to all future construction, maintenance, and
5 repairs.

6 In addition, Mr. Beck should have recommended removal of the following terms in the
7 Easement Agreement as onerous or one-sided:

8 1. Requiring the landowner to release and waive all benefits from Homestead
9 Exemption laws.

10 2. Giving unrestricted ability to expand within the Easement without compensation
11 to the landowner.

12 3. Using a "notwithstanding" clause that releases GBE from liability for damages
13 caused by maintenance of the Easement property.

14 4. Releasing GBE from its obligations and financial liability when assigning the
15 Easement Agreement without any review or proof that the entity receiving the assignment
16 has the ability to satisfy those obligations.

17 5. Granting sole discretion to GBE in determining when trees outside of the
18 Easement area may interfere with their Easement rights.

19 6. Prohibiting any use of the Easement by the landowner during the construction
20 period irrespective of the landowner's needs for livestock rotation and access to crop
21 lands.

1 **Q: What is the basis for your opinions?**

2 A: First, my husband and I have experience with easements and the damage caused
3 by the construction on those easements. We currently have four pipelines crossing our
4 property. Construction companies do not care about the land. During pipeline
5 construction in 2010, a construction crew drove five pieces of heavy equipment across
6 our land after it had been raining for three days. They left knee deep ruts in our pastures.
7 After four years, our land has still not recovered from the construction. This is a prime
8 example why all mitigation terms must be clearly defined in either the Easement
9 Agreement or a supplemental document.

10 **Q: What else has formed your opinion?**

11 A: I reviewed GBE's Easement Agreement that was provided to us. That Agreement
12 was included in Schedule CR-4 of my Rebuttal Testimony. I compared the Agreement to
13 the Agricultural Impact Mitigation Agreement (AIMA) between Rock Island Clean Line
14 LLC (RICL) and the Illinois Department of Agricultural. This document was attached as
15 Schedule CR-5 of my Rebuttal Testimony. In addition, the AIMA is discussed in
16 Schedule DB-6 of Mr. Beck's Rebuttal Testimony starting at DB-6-182. GBE is required
17 by Illinois law to file an AIMA for its proposed route in Illinois. That document will be
18 incorporated by reference into all easement agreements signed by GBE within Illinois.

19 **Q: Do you have any comments about the AIMA relative to the Easement**
20 **Agreement offered by GBE?**

21 A: The AIMA levels the playing field with respect to the bargaining leverage
22 between GBE and Illinois landowners. Based on my experience with Missouri

1 landowners, many landowners do not have the financial resources or legal knowledge to
2 negotiate an agreement that protects their property and financial interests. Negotiating
3 changes to the Easement Agreement could easily cost \$1,000.00 in attorney's fees. With
4 the AIMA, the landowners do not have to fight GBE to include terms that should have
5 been part of GBE's initial Easement Agreement.

6 **Q: Do you have any comments regarding the failure to include terms similar or**
7 **identical to the AIMA?**

8 A: Failing to include terms similar or identical to the AIMA treats Missouri
9 landowners as second class citizens relative to Illinois landowners. Missouri landowners
10 will have fewer legal rights under the terms proposed by GBE and Mr. Beck. It is
11 unacceptable that a Missouri government entity is not willing to require as good a deal
12 for Missouri landowners as one provided to Illinois landowners. Also, GBE has claimed
13 that they want to treat all landowners equally. If that is true, GBE should be willing to
14 incorporate the AIMA provisions into all easement agreements for Missouri, Kansas, and
15 Indiana.

16 **Q: What was the most offensive term in GBE's Easement Agreement that Mr.**
17 **Beck should have recommended for removal?**

18 A: Mr. Beck should have insisted that GBE remove its requirement that Missouri
19 landowners release and waive their Homestead Exemption. GBE, a company backed by
20 a multi-billion dollar investment fund, is requiring that Missouri landowners forgo
21 \$15,000 in equity protection to prevent destitution and hardship in the event of
22 bankruptcy and give up any statutory reductions in property taxes.

1 **Q: What other documents have you read?**

2 A: I read "Questions Answered! Landowner Education, Utility Easements" that is
3 published by the Missouri Farm Bureau. I also read "Granting Easements: You May Be
4 Giving Away More Than You Think" by Naomi K. Reyes.

5 **Q: Have you read the Rebuttal Testimony of Mr. Gray?**

6 A: Yes.

7 **Q: What is the issue with respect to Mr. Gray's Testimony?**

8 A: Mr. Gray discusses decommissioning the transmission line on page 16 of his
9 Rebuttal Testimony. He recommends that the PSC require an escrow for tower removal.
10 I agree with that recommendation. However, Mr. Gray understates the risk to the
11 landowners. In bankruptcy, the secured creditors have first claim against the assets. This
12 would include the salvage value of the towers and equipment. The landowners, as
13 unsecured creditors, would probably receive little if any money to restore the land. In
14 addition, the bankruptcy trustee does not have to honor the contractual commitments
15 under the Easement Agreement. Therefore, the salvage companies removing the
16 structures may not be required to mitigate the damage caused by the removal of the
17 towers. In addition, the companies will probably not remove items that have no salvage
18 value. Logically, the damage to the land in removing the towers will be at least as great
19 as the damage in constructing them. The landowners will be left with compacted soil, tire
20 ruts, debris, and abandoned concrete footings. The escrow amount should equal the labor
21 cost of constructing the transmission line and total cost of mitigating the damage caused
22 by that construction.

1 **Q: Where did you receive your legal information about the contractual**
2 **commitments in bankruptcy and the Homestead Exemption?**

3 A: From our attorney.

4 **Q: What are your summary comments?**

5 A: Based on my reading of the Testimonies and Rebuttal Testimonies, it is apparent
6 that GBE has failed to meet the requirements for receiving a Certificate of Convenience
7 and Necessity (CCN). GBE's highly trained staff of professionals has submitted an
8 application with gaping holes. They have provided as little information as possible. The
9 Easement Agreement is a good example. While cloaked in the rhetoric that GBE is trying
10 to be fair, the Easement Agreement provides GBE with a "blank check". Please
11 remember that Missouri landowners, the people that you are serving, will be left to clean
12 up the mess if the CCN and the proposed Easement Agreement are approved. Missouri
13 landowners will be the ones forced to negotiate an Easement without knowing the final
14 location or dimensions. Missouri landowners will be the ones having to go to court to
15 litigate for an Easement Agreement with protections as least as good as those provided to
16 Illinois landowners. Missouri landowners will be the ones trying to enforce GBE's
17 obligations to mitigate the damages to our land. Missouri landowners will be the ones
18 dealing with the damage caused by GBE's contractors while performing maintenance on
19 the easement property for years to come.

20 **Q: Does this conclude your complete Surrebuttal Testimony?**

21 A: Yes.

Christina Reichert
Christina Reichert

In witness whereof, I have hereunto subscribed my name and affixed my official seal on

10-14-14.

Leslie Reichert
NOTARY PUBLIC

My Commission Expires:

10-21-2017

