

**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 BOYD HARRIS**

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 Boyd Harris.

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. In addition, the pastoral and open views are critical to their Bed and Breakfast business. Mr. Harris volunteered his time to provide a Rebuttal Testimony due to the severe impact that the transmission line will have on the Reicherts' property. Mr. Harris based his Testimony on his experience since 1991 in the valuation of agricultural and agribusiness properties.¹ That experience covered impaired property, the perception of the buyer, and valuation effects of the impairment.² Properties

¹ Rebuttal Testimony of Boyd L. Harris, Doc. 181 at 2:9-11.

² Matthew and Christina Reichert's and Randall and Roseanne Meyer's Responses to Grain Belt Express Clean Line's First Set of Data Requests, No. 2, Page 2 ("Appraising land with power

impaired by transmission lines can be evaluated and valued as any other property with an impairment.

Argument

I. Mr. Harris Has Sufficient Expertise to Provide an Opinion

First, GBE is arguing that Mr. Harris does not possess sufficient expertise with appraisals related to transmission lines. They selectively quote from his response to GBE's Data Request No. 2. The entire quote states:

Specifically, appraisals on takings have not been my general field of practice. Valuation and marketing of land has been my focus since 1991. For a specific example, I don't really have that. There have been so many appraisals over the past years that to go back and find one specifically would be a challenge. Part of my support was simply just my experience in recalling how people have reacted to looking at land with power lines, the reservations about impact, health care concerns, etc. Appraising land with power lines would be similar / identical to appraising land with other impairments such as proximity to factories, nuisance sites, etc. The other thing that is similar would be properties cut in half, odd shapes, etc. by a highway change.³

Mr. Harris based his Testimony on the totality of his experience when valuing land with impairments. The property in Randolph County, Missouri, that was impaired by a transmission line provided additional support for his Testimony. He stated in his Testimony:

The immediate support we would have on this position is a property in Randolph

lines would be similar / identical to appraising land with other impairments such as proximity to factories, nuisance sites, etc.") (Attached as Exhibit A).

³ *Id.* at No. 2, Pages 1-2.

County, Missouri. The property was a well located rural tract with good access, good appearance, and nice amenities such as several small ponds. This tract was platted and marketed for a rural residential subdivision during a time frame when there was a strong demand for these tracts. The property was well exposed to the market by a local broker. One lot was sold at one end of the property. Then the sales stopped. The lot that was sold was the only one that was not near a large power line that bisected the tract. The other lots were near the power line. Though there were potential buyers, none ever purchased lots. The consistent reason for declining to buy was the power line.⁴

Mr. Harris provided the documents related to that property and described the situation in response to GBE's Data Requests No. 4.⁵

Second, GBE is claiming that Mr. Harris' Testimony should be excluded since he did not have an in-depth knowledge of the studies related to transmission lines and property values. Mr. Harris' contention is that transmission lines are not different than any other impairment. The public perception and valuation process would be similar or identical.⁶ In addition, Mr. Harris was aware of articles related to transmission lines and property values. He recently reviewed a

⁴ Harris, Doc. 181 at 3:2-11.

⁵ Data Requests, No. 4, Pages 2-4.

⁶ *Id.* at No. 2, Page 2,

white paper provided by his colleagues in the LaPeer, Michigan, office.⁷ Mr. Harris provided that white paper in response to GBE's Data Request No. 5.⁸

II. Mr. Harris was Offering His Opinion as an Appraiser

The intent of the two questions posed to Mr. Harris regarding the article "Condemnation for Energy Corridors: Selected Legal Issues in Acquisitions for Pipeline and Transmission Line and Other Energy Corridors" was to ask his opinion as an Appraiser about incorporation of fear into the valuation process. He provided two simple answers: "Yes" and "Yes".⁹ The Reicherts are willing to file a Motion to Amend or amend the Testimony upon presentation into evidence to prevent any confusion about the intent of those questions.

III. Mr. Harris' Opinion Regarding the Dannis Property is Valid

GBE states that Mr. Harris' opinion lacks foundation because he cannot recall one specific example of providing an opinion on property impaired by transmission lines. GBE is misstating both Mr. Harris' Testimony and responses to GBE's Data Requests. As previously stated, Mr. Harris is basing his comments on the effect of impairments to property.¹⁰ Second, he quoted a specific example in Randolph County.¹¹ Finally, he stated in response to the Data Request No. 6 about the Dannis property: "The important thing here is the methodology and

⁷ Harris, Doc. 181 at 4:10-17.

⁸ Data Requests, No. 5, Page 5.

⁹ Harris, Doc. 181 at 5:20-6:7.

¹⁰ Data Requests, No. 2, Page 2.

¹¹ Harris, Doc. 181 at 3:2-11. Data Requests, No. 4, Pages 2-4.

approach to the analysis."¹² Mr. Harris subsequently reviewed the appraisal for the Dannis property and included his comments in response to GBE's Data Request No. 6.¹³

IV. Testimony Permitted if Expert Has Some Qualifications

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 33.¹⁴

Also, the Court stated that testimony may be allowed if the witness has some qualifications.¹⁵

Those qualifications go to the weight of the testimony and not its admissibility.¹⁶

In this case, Mr. Harris has both the specialized experience and education that allows him to possess superior knowledge on the valuation of impaired properties.¹⁷ His knowledge of

¹² Data Requests, No. 6, Page 5.

¹³ Data Requests, No. 6, Pages 5-7.

¹⁴ *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)).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Harris at 2:3-11.

valuation is not dependent on whether the impairment is due to a transmission line or a highway. At the very least, Mr. Harris possesses "some qualifications"¹⁸ related to the impact of transmission lines on property. Therefore, his 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 Boyd Harris or grant any other relief as appropriate.

Respectfully submitted,
Law Office of Gary Drag

/s/ Gary Drag

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¹⁸ *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

Gary Drag, MBN 59597

Attorney for Matthew and Christina Reichert
and Randall and Roseanne Meyer

Exhibit A

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

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Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood -)
Montgomery 345 kV Transmission Line)

**MATTHEW AND CHRISTINA REICHERT'S AND
RANDALL AND ROSEANNE MEYER'S
RESPONSES
TO GRAIN BELT EXPRESS CLEAN LINE'S
FIRST SET OF DATA REQUESTS**

Matthew and Christina Reichert (Reichert's) and Randall and Roseanne Meyer (Meyers) state the following as their Responses to the First Set of Data Requests by Grain Belt Express Clean Line LLC (GBE).

1. Regarding the rebuttal testimony of witness Boyd Harris, please provide a copy of his professional resume or biography.

Response: Please refer to Attachment 1-1.

2. Please provide a list and describe the appraisals or instances where Mr. Harris provided opinions on land parcels impacted by power lines.

Response: Mr. Harris' comments are:

Specifically, appraisals on takings have not been my general field of practice.

Valuation and marketing of land has been my focus since 1991. For a specific example, I don't really have that. There have been so many appraisals over

the past years that to go back and find one specifically would be a challenge. Part of my support was simply just my experience in recalling how people have reacted to looking at land with power lines, the reservations about impact, health care concerns, etc. Appraising land with power lines would be similar / identical to appraising land with other impairments such as proximity to factories, nuisance sites, etc. The other thing that is similar would be properties cut in half, odd shapes, etc by a highway change.

3. Please describe and produce any “additional data that will be relevant” to Mr. Harris’ opinions as referenced in page 3, lines 16-17 of his testimony.

Response: Mr. Harris' comments are:

The additional data that I referenced would be quite voluminous. This would potentially include my entire database of sales which would be drawn upon to make comparisons and supporting data. Given the nature of the initial inquiry, my comments were more general in nature; my thoughts as to how I would proceed on this type of project; rather than specific to valuation of a specific property.

4. Please provide all copies of documents regarding the appraisal and sale of the property in Randolph County, Missouri referred to by Mr. Harris in his rebuttal testimony at page 3.

Response: Please refer to Attachment 4-1. Mr. Harris' comments are:

The Lakeview Estates subdivision was a 120+ acre tract of land along Highway 3, just south of Highway 24. There is a county gravel road along the south side. The property was developed with two 8+ acre lakes, interior roadways, rural water and, oddly enough, required underground electric service. The site is irregular in shape, wide on the west end along Highway 3, then tapering to the east. The property is bisected east/west by an "H"-tower HVTL the full length of the property. There were a total of 22 lots, ranging in size from 5 to 10.56 acres. Of these, Seven were fully bisected and Four abutted the power line right of way. The property was developed in 2005/2006, at the height of the residential development frenzy and marketed by a reputable local Realtor. There was one lot sale in 2006. That was Lot 14, 9/22/2006, a 5.38 acre lot that did not front a lake and was not bisected by the power line, nor did it abut. This lot sold for \$26,000, or \$4,832.71 per acre. The property remained on the market until December 2009 when the remaining 124.62 acre property was sold. At that time, in a transaction brokered by the original Realtor, the property sold for \$232,000, equating to \$1,861.66 per acre. Additionally, the Buyer rescinded all subdivision development documents, covenants, etc, to completely dissolve any development elements.

Interestingly enough, the differential here amounts to some 62% less for the property as a whole versus the potential sale price/value as subdivision lots. This is consistent with the conclusion in the referenced "Dannis" appraisal in

the “Northern Pass” project. I believe this is an excellent confirmation of that conclusion.

Another sale of 2 lots of the former Lakeview Estates subdivision was confirmed. In July 2014 Lots 14 and 15 were sold to the Buyer of Lot 13. These two lots totaled 10.38 acres and sold for \$25,000 total, equating to \$2,408.48 per acre. These were sold based on the survey of the subdivision but were sold AFTER the subdivision elements were rescinded; so basically just a 10+ acre tract of land.

For comparison; the sale of Lots 14 and 15, just vacant land, sold for 50% less than the active, platted, subdivision lot sale. Compared to the sale of the entire parcel the Lots show a 22% decrease in the sale of the whole versus the small tract sale.

Again, I would argue that this lends support to the Northern Pass assessment of 62% loss/impact due to the power line.

I confirmed the sale of Lots 14/15 with the buyer whose son had bought Lot 13 and built a house there. He shared some insight, from a buyer, that strongly confirms some of the assertions in the Bolton/Sick paper I provided to you. When I asked if the power line was an issue in looking at the property he said “a bunch”. He then said, “if we could not have bought a lot on the back side, we would not have bought at all”. He further indicated that in conversation with other potential buyers, the power line bisecting the property was the major issue. They all like the sites, lake, etc, but DID NOT like the power line.

5. Please provide copies of the “white papers” referred to by Mr. Harris in his rebuttal testimony at page 4 that were provided by colleagues in his company's Lapeer, Michigan office.

Response: Please refer to Attachment 5-1.

6. With regard to the Northern Pass Project discussed in the article cited by Mr. Harris in his rebuttal testimony at page 6, please state whether he has appraised property in New Hampshire or the province of Quebec. If so, please provide copies of all appraisals or other studies that he has conducted of such properties.

Response: Mr. Harris' comments are:

The implication of this request is a bit odd. The short answer, No, I have not appraised land in Quebec or New Hampshire. The important thing here is the methodology and approach to the analysis. To imply that since one has not done an appraisal in a specific province or state makes no more sense than to say since you don't have a New Hampshire drivers license you can't drive there. The technique is what is important and the data gathered from the analysis. Really no different than an attorney citing case law or precedence from different jurisdictions to support their local case. The conclusions are the important thing.

Please refer to Attachment 6-1 for the appraisal report for the Northern Pass Project that became available during the week of October 7. The document is 14 Mb in size and cannot be send by e-mail. Therefore, the file is available at

http://LawOfficeOfGaryDrag.com/Files/20141004_Discovery_Reichert_ResponsesToDataReqsByGBE_Attachment06-1.pdf. The original document is available at

http://www.northernpasseis.us/media/comments/SCI_ADan_41211.pdf. Mr. Harris' comments regarding the methodology are:

In general, the report appears to be properly developed. However, there was a point on which I was not clear as to why the appraiser had developed them.

The date of value is April 2011 and it would appear that he made the conclusion that the market had stabilized in July 2010 and he had data to support a time adjustment for sales prior to that. The part that did not make sense was the development of sales and values for the 2007 “market high point”. The only conclusion I can see to come of this is that the “High Market Values” did support his overall conclusion and might, perhaps, show that the discount could be just slightly less in a strong market versus a steady-weak market time period. The percentage difference conclusions are on Page 61 of the report.

By comparison, the Dannis property stood to be bisected by the power line in a fashion nearly identical to the Lakeview Estates property referenced above, so there is strong similarity in physical impact of the two properties.

On Page 42 of the appraisal, the conclusions drawn as to the effect on value by the HVTL are supported by the Lakeview sales.

On Page 46, the results presented from the survey of Realtors in the Dannis region are supported by and provide credibility to the arguments presented in

the Bolton/Sick paper which I reviewed; relative to the perceived “fear” factor in the market of properties under HVTL.

On Page 48, his assumption of market stabilization in mid-2010 would be reasonably consistent with this area, thereby supporting his conclusion as to the discount.

7. Regarding the rebuttal testimony of witness Christina Umbriaco, please provide a copy of her professional resume or a statement of basic biographical information, including education, employment and professional experience.

Response: Please refer to Attachment 7-1.

8. Please provide a list of the judicial, regulatory or other governmental proceedings, including docket numbers, in which Ms. Umbriaco provided drawings or other visual depictions for submission into evidence.

Response: None.

9. Please provide the scale of Ms. Umbriaco’s drawing contained in Schedule CU-1 to her rebuttal testimony.

Response: The scale will depend on the location in the photo. The dimensions for the closest transmission tower are based on the dimensions of the house relative to the tower in Schedule SN-1 of Scott Nordstorm's Rebuttal Testimony. The house is approximately 24 foot high, the barn is approximately 20 foot high, and the transmission tower is approximately 150 foot high.

The height of the 100 foot monopole tower along the creek is interpolated from the 20 foot height of the trees along the creek. The 20 foot scale represents the height of the trees along the creek.

The dimensions of the 150 foot tower farthest from the viewer are based on the height of the trees along the west boundary line. The 90 foot scale is based on the height of the trees along the west boundary line.

10. Please state if Ms. Umbriaco relied upon the drawing contained in Schedule CU-4 to prepare Schedule CU-1 to her rebuttal testimony. If so, please describe how the drawing was relied upon.

Response: Ms. Umbriaco used the architectural shape of the house to represent the house in Schedule CU-1. The image of the house in Schedules CU-2 and CU-3 was obscured by the tree located southeast of the house.

11. Please describe in detail the writing contained the in upper left corner of the drawing contained in Schedule CU-1 and in the lower left corner of the drawing contained in Schedule CU-3, both attached to the rebuttal testimony of Ms. Umbriaco.

Response: The 20 foot scale represents the height of the trees along the creek. The 90 foot scale is based on the height of the trees along the west boundary line. These heights were used to calculate the tower heights for the transmission towers.

Please refer to Attachment 11-1 for the corrected version of Schedule CU-3 that does not truncate the descriptions. These descriptions were provided by Mrs. Reichert based on information provided by GBE material and representatives

12. Regarding the rebuttal testimony of witness Scott Nordstrom, please define “generally accepted architectural practices,” referenced on page 3, line 4, and provide a copy of his Architect’s License from the Nebraska Contractors Licensing Board, referred to on p. 2.

Response: Please refer to Attachment 12-1 for a copy of Mr. Nordstrom's license renewal for the period of January 1, 2013 through December 31, 2014. Please refer to Attachment 12-2 for a summary page of his project portfolio. Mr. Nordstrom comments are:

"Generally accepted practices" = pretty basic...use a scale to determine heights and distances. Lattice pole is 120'-150' tall...home is 24' tall and is approximately 400' away. Information on power poles came from website listed in original submittal. Easements were determined by multiplying distance and easement width, then divided by 43,560 square feet in an acre. So "scale" and basic "math" = "generally accepted practices". I then pulled the parts and pieces of the information given me from websites and then composed them into a graphic that is visually understandable.

13. Please identify what portion of Schedule SN-2 (attached to the rebuttal testimony of Scott Nordstrom) that Mr. Nordstrom created.

Response: Mr. Nordstrom created the home, typical power pole, and scale lines in Schedule SN-2. The house dimensions were provided by Christina Reichert. The high voltage transmission towers were taken from literature published by GBE that was cited in Mr. Nordstrom's Rebuttal Testimony.

14. Regarding the rebuttal testimony of witness Christina Reichert, please provide a copy of her professional resume or a statement of basic biographical information, including education, employment and professional experience.

Response: Please refer to Attachment 14-1.

15. Please provide the missing information on page 8, line 15 of Ms. Reichert's rebuttal testimony.

Response: The sentence should have been revised to read "Occupancy has increased over 200% since 2010." The phrase "200% since 2010" can be substituted for the blank so that the original sentence reads "The last couple of years the occupancy has increased to over 200% since 2010."

16. Regarding the rebuttal testimony of witness Roseanne Meyer, please provide a copy of her professional resume or a statement of basic biographical information, including education, employment and professional experience.

Response: Please refer to Attachment 16-1.

17. Please state the specific geographic location of the private airstrip described on page 6, line 18 of Ms. Meyer's rebuttal testimony.

Response: Mr. Robert Unterernaehrer's hanger coordinates are Latitude of 39 -28-12 and Longitude 93-5-21. Please refer to Section 12 on the plat map in Attachment 17-1. Please

note that this airstrip is already mapped in GBE's GIS database. Attachment 17-2 shows GBE's information that was produced through discovery.

Respectfully submitted,
Law Office of Gary Drag

/s/ Gary Drag

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CERTIFICATE OF SERVICE

I certify that true and accurate copies of this Motion were sent by e-mail on October 5, 2014, to all parties on the official service list for this case.

/s/ Gary Drag

Gary Drag, MBN 59597
Attorney for Matthew and Christina Reichert
and Randall and Roseanne Meyer

VERIFICATION OF RESPONSES

The answers provided to these Data Requests have been collected from Christina Reichert, Roseanne Meyer, Boyd Harris, Christina Umbriaco, and Scott Nordstom. The answers are true and accurate to the best of my knowledge and belief.

Respectfully submitted,
Law Office of Gary Drag

/s/ Gary Drag

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