

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

In the Matter of the Application of Ameren Transmission)
Company of Illinois for Other Relief or, in the Alternative,)
a Certificate of Public Convenience and Necessity)
Authorizing it to Construct, Install, Own, Operate,) File No. EA-2015-0146
Maintain and Otherwise Control and Manage a)
345,000-volt Electric Transmission Line from Palmyra,)
Missouri, to the Iowa Border and Associated Substation)
Near Kirksville, Missouri.¹)

MOTION TO STRIKE REBUTTAL TESTIMONY OF BOYD L. HARRIS

Ameren Transmission Company of Illinois (“ATXI”) pursuant to Mo. R. Civ. Proc. 55.27(e) and 4 CSR 240-2.080(4), moves to strike and exclude the rebuttal testimony of Boyd L. Harris because he lacks sufficient expertise to opine regarding the subject of his testimony, because his opinions lack sufficient foundation and relevance, and because his testimony is based entirely upon hearsay. Other portions of his testimony call for legal conclusions which the witness is unqualified to make. Accordingly, ATXI moves the Public Service Commission (“PSC”) to strike the rebuttal testimony and deny its admission into the evidentiary record.

I. Background:

Boyd L. Harris (“Mr. Harris”) filed rebuttal testimony consisting of six (6) pages on October 19, 2015. On the cover page of that testimony, sponsored by Neighbors United Against Ameren’s Power Line (“Neighbors”), the issues addressed in his testimony were identified as “Impact on Land Values, Public Interest.” The deposition of Mr. Harris was taken on January 12, 2016.

¹ The project for which the CCN is sought in this case also includes a 161,000-volt line connecting to the associated substation to allow interconnection with the existing transmission system in the area.

II. Argument:

A. Mr. Harris' Opinions Lack Sufficient Foundation and Relevance.

While it is true this Commission is not bound by the technical rules of evidence, it is still bound by the fundamental rules of evidence:

Cases brought before administrative agencies generally are less formal and structured than are civil proceedings in the circuit courts. That does not mean that evidentiary rules developed in civil cases have no application to administrative actions, however. To the contrary, the legislature has specifically directed that many evidentiary principles developed in civil actions be applied in administrative ones, including those regarding privilege, judicial notice, admission of writings and documents, depositions and so forth.

State Bd. of Registration for Healing Arts v. McDonagh, 123 S.W.3d 146, 154 (Mo. 2003). In fact, the Commission's own regulation at 4 C.S.R. 240-2.130(1) adopts particular rules of evidence found at Mo. Rev. Stat. § 536.070.

The standards for admission of expert testimony constitute a fundamental rule of evidence in administrative proceedings such that expert testimony must meet the standards for admissibility set out in Mo. Rev. Stat. § 490.065. *McDonagh*, 123 S.W.3d at 154-155. This statute expressly allows opinion testimony only from experts in the relevant area established as such by proper foundation, and requires a showing that facts and data are of a type reasonably relied on by experts in the field in forming opinions or inferences upon the subject of the expert's testimony. *McDonagh*, 123 S.W.3d at 156, *citing* Mo. Rev. Stat. § 490.065.3. That foundation must be laid in order for a witness to be qualified as an expert under section 490.065.²

² See also *In the Matter of the Application of Union Electric Co., d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a Utility Waste Landfill and Related Facilities at its Labadie Energy Center*, 2013 Mo. PSC LEXIS 896 at *2-*3 (Order Regarding Objections and Motion to Strike) (Case No. EA-2012-0281, August 28, 2013). *Labadie*, 2013 Mo. PSC LEXIS 896 at *6.

“As a rule, the testimony of a witness must be based upon personal knowledge. If the testimony of a witness, read as a whole, conclusively demonstrates that whatever he may have said with respect to the issue under investigation was a mere guess on his part ..., his testimony on the issue cannot be regarded as having any probative value.” *State v. Howell*, 143 S.W.3d 747, 750 (Mo. W.D. App. 2004). “To lay a proper foundation for the testimony of an expert witness, the proponent must show that the witness has sufficient expertise and acquaintance with the incident involved to testify as an expert.” *State v. Watling*, 211 S.W.3d 202, 208 (Mo. App. S.D. 2007), citing *State v. Watt*, 884 S.W.2d 413, 415 (Mo. App. E.D.1994). “Where an expert's testimony is mere conjecture and speculation, it does not constitute substantive, probative evidence on which a jury could find ultimate facts and liability.” *Mueller v. Bauer*, 54 S.W.3d 853 (1953).

The summary of Mr. Harris’ opinion is located at page 3 of his rebuttal testimony:

It is my opinion that a power line easement of the magnitude necessary for ATXI's proposed project on agricultural properties will significantly impact the values of productivity from the cropland. There are a number of ways this will happen ranging from the placement of towers impacting the functionality of the farmland, compaction from construction limiting grain production, and lack of demand on the market due to the foregoing impacts. Second, residential properties will have the unsightly appearance of the power line, health concerns resulting from stray voltage, etc.

See Harris Rebuttal at 3:2 -3:8.

While identifying his testimony as applicable to the issue of “Impact on Land Values and Public Interest”, his testimony is utterly lacking in foundation or support. This is due to a combination of factors, including his lack of experience in working with easement interests; his lack of experience in working with any sort of utility interest; his lack of knowledge related to the Mark Twain Project; his failure to perform any due diligence related to the project; his

inability to provide any specifics related to the one example cited in his testimony; and his reliance upon two articles that have no relevance to the issues he is purportedly sponsoring.

In rendering an opinion related to a project involving the acquisition of easements for the construction of a transmission line, one would presume that at the time his testimony is filed that expert would have a sufficient amount of experience with the subject matter involved. A review of his deposition transcript reveals that for Mr. Harris that presumption would not be supported:

Q. Do you ever do appraisals involving the acquisition of an easement interest?

A. I have had occasion to do very few of those.

Q. Over your career -- let's just go back to 1991. Can you tell me how many appraisals related to the acquisition of an easement interest that you've performed?

A. Probably less than a half dozen.

* * *

Q. Have you ever performed an appraisal involving the acquisition of an easement involving a water utility?

A. No.

Q. How about a -- an appraisal involving the acquisition of an easement interest on behalf of a REC or a cooperative?

A. No.

* * *

Q. How about on behalf or involving a gas utility? Have you ever performed an appraisal involving an acquisition of an easement involving a gas utility?

A. No.

Q. Have you ever performed an appraisal involving acquisition of easements involving electric transmission facilities?

A. No.

Q. How about an acquisition -- appraisal of an acquisition of an easement involving any sort of electric facility?

A. No.

* * *

Q. Are you a member of the International Right of Way Association?

A. I am not.

Q. Do you hold any designations from the International Right of Way Association?

A. No.

January 12, 2016 Depo. of Boyd Harris at 15:5-11; 19:15-21; 20:17-21:2; 22:3-8.

In rendering an opinion related to a project involving the acquisition of easements for the construction of a transmission line, one would further presume that at the time his testimony is filed that expert would have a sufficient base of knowledge about the project involved and would have performed some amount of due diligence. Again, a review of his deposition transcript reveals that for Mr. Harris that presumption is not supported. Mr. Harris' lack of knowledge related to the Mark Twain Project commences with an admission that he has a limited degree of familiarity with the Mark Twain Project³, which in fact turns out to be a significant understatement:

Do you know how high the structures will be?

A. Not specifically in this case, no.

Q. Do you know how many structures will be involved?

A. In total?

Q. Correct.

A. I have no idea.

* * *

Q. Have you spoken with anybody outside of Ameren Transmission Company, maybe someone in the electric utility industry, about the types of structures that ATXI is going to use, these monopole structures?

A. I don't believe so, no.

Q. Have you spoken with anybody else about the types of structures that would be used?

A. Not that I recall, no.

Q. Did you talk with any of the landowners, maybe somebody from Neighbors United, that were directly impacted by the proposed route?

A. I had no occasion to do that, no.

Q. Did you visit any of the properties that would be subject to the proposed transmission line route?

A. No.

* * *

Q. How many farms will be bisected?

A. I would assume several. This is a lengthy project. I have no idea. As I said, I haven't seen the specifics on the project.

³ January 12, 2016 Depo. of Boyd Harris at 7:11.

* * *

Q. Are you familiar with the width of the easement for each section of the line?

A. This project specifically? No.

Q. So, do you know the voltage of each portion of the project?

A. In this project? No.

* * *

Q. Have you performed any analysis, and at the time you wrote this, your testimony, had you performed any analysis of the percentage of each parcel that will be subject to a transmission line easement?

A. No.

Q. And we talked a little bit about easements come in all shapes and sizes. Have you reviewed the form of easement that ATXI is proposing to use to acquire easement rights on the Mark Twain project?

A. No.

Q. So you're not aware of the rights the landowner would retain under the ATXI document?

A. Not specifically, no.

Q. Have you ever traveled the proposed route of the Mark Twain project from west in Marion County, east Adair County and north to -- through Schuyler County?

A. Not specifically, no.

Q. Have you reviewed -- and I think you said you had not but I want to make sure -- any drawings or maps depicting the location of ATXI towers on farmland?

A. No.

* * *

Q. Do you know how many parcels are affected by this transmission line project, this Mark Twain project? Have you counted the number?

A. I think we've asked the question before, and no.
Specifically I'm not.

Q. You don't know the length of the project?

A. You asked that question before, and, again, no.

January 12, 2016 Depo. of Boyd Harris at 31:18-24; 34:19-35:8; 41:17-20; 43:18-20, 23-25;
44:1-21; 47-18-24.

It is difficult to fathom how an individual with such a tangential involvement with a project can render an opinion about “a power line easement of the magnitude necessary for ATXI's proposed project”⁴ when that expert has no awareness of what the magnitude will be:

Q. Okay. So, are you familiar with the magnitude of the power line?

A. Other than to know it is to cross several counties and within a couple of different states, no.⁵

January 12, 2016 Depo. of Boyd Harris at 43:14-17.

While listing a litany of ways in which ATXI's project will impact productivity from the cropland, Mr. Harris' lack of familiarity with the project and absence of due diligence would result in guess work as to what that impact will be. Having reviewed no specific design plans or information on specific drawings⁶, he cannot opine as to the impact of the placement of towers and functionality of the land. Moreover, having not visited any parcel along the route nor performed any soil testing, he cannot opine as to the impact of compaction from construction. Mr. Harris confirms his lack of knowledge on Mark Twain Project related compaction issues in his deposition:

Q. Do you have any personal knowledge of how long it would take a property to recover from compaction following construction?

A. Not that I'm going to render an opinion on because I think a lot of that will depend on soil type and how it gets -- you know, the efforts to bring it back into construction -- into production.

January 12, 2016 Depo. of Boyd Harris at 48:13-19.

⁴ See Harris Rebuttal at 3:2 -3:3.

⁵ As the Commission is aware from ATXI's Application, the Mark Twain Project would be constructed entirely within Missouri.

⁶ January 12, 2016 Depo. of Boyd Harris at 28:4-5.

Mr. Harris' opinion also suffers from the inability to cite to an example in support of a lack of demand on the market associated with a power line. Again his deposition testimony demonstrates the complete lack of foundation for his uninformed opinion:

Q. When you talk about a lack of demand on the market -- it's in your opinion -- and you talked about a concern over a lack of demand on the market due to all these impacts that you talk about in your opinion, what are you referring to?

A. Well, a couple of points: The -- from a farmland perspective, and don't ask me to cite specific cases because I probably can't...

* * *

Q. So, when you talk about a lack of demand on the market, are you talking about just generally the impact that power line construction projects have as opposed to this particular project?

A. I think that was more of a general statement rather than a case specific statement, yes.

* * *

Q...Please list and describe the appraisals or instances where you've provided opinions on land parcels impacted by power lines.

A. There have been numerous properties that we have valued that had large power lines across them, but the honest answer would be that to say I specifically gone out to do an assignment to determine the impact of that value, I don't know that I have done that specifically.

January 12, 2016 Depo. of Boyd Harris at 49:13-20; 50:5-10; 22:14-21.

The second part of Mr. Harris' opinion, that residential properties will have the unsightly appearance of the power line, health concerns resulting from stray voltage, etc., is similarly unsupported. In addition to his admission in his deposition that he does "very little residential work", ATXI offers the following deposition examples that also establish that Mr. Harris has no foundation for his opinion:

Q. Let's talk case specific. Have you performed any analysis of the market impact associated with the ATXI easements?

A. To this point, no.

Q. Do you anticipate doing so?

A. I have not been asked or retained to do so, and I have no way to know whether that will be asked or not.

Q. Have you performed any analysis associated with the unsightly appearance of ATXI's power line?

A. No.

Q. Can you provide me an example of an appraisal that you performed where you factored unsightly appearance into your valuation?

A. I don't know up to this point I have encountered cause to do that.

* * *

Q. Did you perform any analysis associated with health concerns from -- I think you call it stray voltage, etc., associated with ATXI's power line?

A. Not specifically with that, no.

* * *

Q. Can you provide me any examples of an appraisal you performed where you factored health impacts into your valuation?

A. No.

Q. Why not? Is that because you have never done one?

A. I haven't done one where that was an issue.

Q. Okay. And that would also apply to any appraisals where you factored health impacts associated specifically with stray voltage into your valuation; correct?

A. Correct.⁷

January 12, 2016 Depo. of Boyd Harris at 50:11-25; 51:3-6; 51:23-52:7.

⁷ The Randolph County example cited by Mr. Harris in his testimony as support for his opinions also suffers from a lack of foundation. In addition to not being able to remember the names of either the developer or the alleged purchasers who purportedly did not purchase lots due to the existence of the power line, it appears that Mr. Harris had very little involvement with the development itself. The following excerpts from the transcript of his deposition support ATXI's argument:

Q. Did you perform an appraisal on any of the parcels at the time the Randolph County property was being developed?

A. No.

Q. Have you ever performed any appraisals on any of the parcels identified in your example from Randolph County?

A. The answer to the question is no. The example was provided because it is a proximate example of the impact of the line, and it is no more or no less appropriate than examples that were used by other folks in this case citing cases out of Wisconsin and Massachusetts and places much farther removed. It's simply supporting data.

January 12, 2016 Depo. of Boyd Harris at 53:4-14.

Downplaying the importance of the Randolph County example is significant as it provides the sole example in support of his summary opinion.

Perhaps the most direct evidence supporting the lack of diligence performed by Mr. Harris related to the Mark Twain Project, however, is the startling similarity between the rebuttal testimony filed herein, and what he filed in Case No. EA-2014-0207⁸, a copy of which is attached hereto as Exhibit A. A comparison of these two filings demonstrates that no activity was performed that was unique to the Mark Twain Project. Each contained the same summary opinion, the same supporting example, the same two articles. Entire passages are repeated almost verbatim. The only significant distinction is that in the present matter, Mr. Harris has added an additional issue that he is sponsoring in addition to “Impact on Land Values” – “Public Interest”; however, it does not appear that he has offered any testimony to support that issue, and ATXI would request any effort by Mr. Harris to testify in support of the impact that the Mark Twain Project would have on the Public Interest be similarly stricken.

The Commission, as required by the fundamental rule of evidence requiring a proper foundation, has frequently rejected the admission into evidence of documents for which the proper foundation had not been laid. *See, e.g., In the Matter of the Application by Aquila, Inc., for Authority to Assign, Transfer, Mortgage or Encumber Its Franchise, Works or System*, 2003 Mo. PSC LEXIS 1558 at *2 (Order Denying Staff’s Motion to File Exhibits Late) (Case No. EF-2003-0465, December 4, 2003) (rejecting Staff request to admit SEC10-Q filing and documents evidencing sale of collateral where no foundation could be laid for exhibits); *In the Matter of Union Electric Co. of St. Louis, Mo., for Authority to File Tariffs Increasing Rates for Electric Service*, 1983 Mo. PSC LEXIS 19 at *10 (Report and Order) (Case No. ER-1983-0163, October 21, 1983) (rejecting utility’s request to admit Proposition I campaign literature where no foundation laid to identify authors or to describe their connection with Proposition D); *In the*

⁸ *In the Matter of the Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity.*

Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service, 2000 Mo. PSC LEXIS 1186 at *3 (Order Sustaining Objections to Late-Filed Exhibit No. 241) (Case No. GR-1998-0140, August 10, 2000) (denying admission of IRS letter ruling because, among other grounds, no foundation had been laid for its admission).

When viewed in light of the legal authority cited above, the testimony of Mr. Harris fails miserably. Mr. Harris' summary opinion is based upon guess work and lacks any probative value. Mr. Harris lacks sufficient expertise and acquaintance with the incident involved (the Mark Twain Project) to testify as an expert. Put simply, Mr. Harris does not possess "sufficient expertise and acquaintance with the incident involved to testify as an expert." See *Watling*, 211 S.W.3d at 208. Instead, Mr. Harris' testimony constitutes "mere conjecture and speculation," *Mueller*, 54 S.W.3d at 657, and should therefore be excluded.⁹

B. The Support for Mr. Harris' Opinions Are Based Entirely On Hearsay.

The bar against the admission of hearsay evidence over objection is also a fundamental rule of evidence before the Commission. *Lee v. Missouri Am. Water Co.*, 2009 Mo. PSC LEXIS 430 at *2-*3 (Case No. WC-2009-0277, May 19, 2009). This is because the value of hearsay evidence depends on the *declarant's* credibility evaluated under cross-examination; where there is no opportunity for the declarant to be cross-examined, that determination cannot be made. *Id.* Because the right to cross-examination of opposing witnesses is a fundamental due process right, hearsay evidence must be excluded upon objection to its admission. *In the Matter of the Application of Keith Mallory for a Certificate of Convenience and Necessity to Haul Mobile Homes*, 1982 Mo. PSC LEXIS 20 at *7 (Case No. T-48,374, September 20, 1982). Where there

⁹ As discussed below it is important to note that even where an expert relies upon documents containing facts and data of a type reasonably relied on by experts in the field in forming his or her opinions, the underlying documents are not admissible absent proper foundation. *Wilson v. ANR Freight Sys., Inc.*, 892 S.W.2d 658, 664-665 (Mo. App. W.D. 1994). This is because the books or publications are often hearsay evidence of matters concerning which living witnesses could be called to testify. *Longshore v. City of St. Louis*, 699 S.W.2d 16, 18 (Mo. App. E.D. 1985).

is an objection made, hearsay evidence does not rise to the level of "competent and substantial evidence" upon which the Commission can base its decision. *State ex rel. Marco Sales, Inc. v. Pub. Serv. Comm'n*, 220 (Mo. App. W.D. 1984); *State ex rel. DeWeese v. Morris*, 209 (Mo. 1949). Reliance on such information would therefore constitute error by the Commission.

Application of this fundamental rule of evidence by the Commission has resulted in the exclusion of an affidavit that merely relayed what the affiant learned from another person (*McFarlin v. KCPL&L Greater Mo. Operations Co.*, 2013 Mo. PSC LEXIS 311 at *5-*6 (Case No. EC-2013-0024, March 21, 2013)); exclusion of website pages, as well as testimony from an unrelated public hearing (*Lee*, 2009 Mo. PSC LEXIS 430 at *2-*3); exclusion of anonymous letters (*In the Matter of the Joint Application of Great Plains Energy Inc., KCP&L Co., and Aquila, Inc., for Approval of the Merger of Aquila, Inc.*, 2008 Mo. PSC LEXIS 693 at *26 (Case No. EM-2007-0374, July 1, 2008); and exclusion of letters from various witnesses who were not present to testify at hearing (*In the Matter of the Application of Keith Mallory*, 1982 Mo. PSC LEXIS at *6-*7). It is equally true that where the information in them is offered for the truth of the matter asserted, newspaper articles or clippings also constitute inadmissible hearsay. *Wessel v. Wessel*, 953 S.W.2d 630, 631 (Mo. App. S.D. 1997) citing *Thoroughbred Ford, Inc. v. Ford Motor Co.*, 908 S.W.2d 719, 736 (Mo. App. W.D. 1995); *McDowell v. LaFayette Co. Comm'n*, 802 S.W.2d 162, 166 (Mo. App. W.D. 1990).

The rebuttal testimony of Mr. Harris reveals three blatant examples of inadmissible hearsay. The first example is the discussion by Mr. Harris of the support for his summary opinion. Mr. Harris references a single example, which best approximates the economic damage that a project (such as the "Mark Twain Project") can cause to agricultural land. However, at his deposition Mr. Harris was unable to provide any detail in support of his position other than out of

court statements offered to prove the truth of the matter asserted (that the presence of a power line resulted in the failure of a residential development):

Q. Do you remember who the developer or the owner of the parcels was?

A. No, not off the top of my head.

* * *

Q. What was the nature of your conversation? Were there e-mails or communication back and forth? Was it a phone call?

A. It was a phone conversation.

Q. And how long did this phone call take?

A. I have -- I would have no way of recalling how long it was. We visited for some time; how long, I don't recall.

Q. You took some notes?

A. Probably somewhere.

Q. Do you think you still have those?

A. I wouldn't want to bet on it.

* * *

Q. And how was the market at that time?

A. That property started when it should have. The market did change subsequently. But the conversation I had with the developer, I shored that conversation up with further discussions with people who bought lots there and people who started to but didn't.

Q. All right. Let's talk about those people. So, you shored it up by talking with people. Give me the names of the individuals that you spoke with and when you spoke with them.

A. I do not have that.

* * *

Q. Now, depending on when this -- this project would have started, my understanding is that there was a fairly significant recession that hit -- hit the market that lasted for, you know, upwards of seven years.

A. And I understand the context of your question and where you're headed and where you want me to go. But I'm going to argue with that because in my opinion, when I've got people who are telling me specifically this power line was the reason that we didn't buy there and then they went and bought somewhere else, I believe that is much more telling than to say, well, they didn't buy here because the market was going in recession.

Q. And I understand that that's what people told you. How many people told you that?

A. Probably three.

Q. And how many properties were impacted by this entire development?

A. There were a number of lots. I don't remember exactly how many.

Q. More than ten?

A. Probably 12 or 15, if I remember right.

Q. Okay. And you can't remember the names of any of the three?

A. I made notes, called them, and the notes probably went by the wayside.

January 12, 2016 Depo. of Boyd Harris at 54:3-5; 55:1-11; 56:20-57:5; 57:18-58:17.

It is difficult to contemplate how ATXI (or the Commission) would be able to determine the credibility of a declarant that cannot even be identified, much less cross-examined; particularly when no documentation supporting those hearsay statements currently exists.

The second example of hearsay in the testimony of Mr. Harris is his reference to the newspaper article "Couple: Northern Pass Kills Land Value" that appeared in the *New Hampshire Union Leader* in 2011. At his deposition Mr. Harris was unable to provide any detail in support of the article other than its existence, and presumably his position that the out of court statements therein somehow prove the truth of the matter asserted (that the presence of a power line "kills land values"):

Have you done any independent valuation of this article for -- to confirm its results?

A. No.

Q. And who was the -- have you spoken with the author of this article?

A. No.

Q. Do you know whether the author was an appraiser?

A. I have no idea.

Q. Do you know if the people interviewed were appraisers?

A. I have no -- no.

Q. Do you know if an appraisal of the subject property contained in this article was ever conducted?

A. I would have no way of knowing that.

Q. Are you aware of the structures that were used in the study referenced in this article?

A. No.

Q. Are you aware of the distance between the structures and residences or buildings that were covered by that study?

A. That wasn't contained in the article, so specifically, no.

Q. Are you aware of any study that would support similar findings in the state of Missouri?

A. Specifically, no.

January 12, 2016 Depo. of Boyd Harris at 86:5-87:4.

The third example of hearsay in the testimony of Mr. Harris is his reference to the legal treatise "Condemnation for Energy Corridors: Selected Legal Issues and Acquisitions for Pipeline, Transmission Line and Other Energy Corridors"¹⁰.

The cumulative effect of these three examples is significant, as they provide all the documented support for Mr. Harris' opinions. In fact, by his own admission, the validation of the two articles (identified above as hearsay examples 2 and 3) were the basis for his retention by Neighbors United:

Q. Okay. Now, prior to preparing your testimony, did you talk to anybody at ATXI or Ameren Transmission Company of Illinois?

A. No, because that would not have been in the context or in the scope of what I was asked to do¹¹.

Q. Wouldn't you agree with me the issue identified in your testimony is impact on land values associated with the Mark Twain project?

A. What I was asked to do was to review some documents and determine if I thought they were relevant and made sense, which is what I did in the context of those documents I reviewed.

January 12, 2016 Depo. of Boyd Harris at 33:10-21.

C. The Support for Mr. Harris' Opinions Are Based In Part Upon Legal Conclusions and Opinions Beyond His Expertise.

In his testimony, Mr. Harris discusses the article "Condemnation for Energy Corridors: Selected Legal Issues and Acquisitions for Pipeline, Transmission Line and Other Energy Corridors" and is in fact asked to adopt certain positions continued therein:

Q: Do you agree with the article's statement "The majority view among courts is that evidence of fear in the marketplace is admissible with respect to the value of the property taken without proof of the reasonableness of the fear?"

A. Yes.

Q: Do you agree with the article's following statement "This appears to be the best approach because it appropriately places the focus on the impact of the alleged

¹⁰ Discussed in more detail below.

¹¹ Note in discussing his engagement Neighbors United earlier in his deposition Mr. Harris addressed being provided the two articles described herein by Neighbors United member Deborah Games. He does not mention the review of any other materials, and none have been provided.

fear on property value, and shields the court from having to engage in analysis of competing scientific views on issues where no scientific consensus exists, such as the link between EMF and cancer and other health issues"?

Yes.¹²

Again the deposition transcript reveals that Mr. Harris is wholly unqualified to make either statement:

Q. Do you have any kind of a legal background?

A. No.

Q. Never gone to law school?

A. That would be correct.

Q. And you've not gone to paralegal school?

A. That would be correct.

* * *

Q. Would you agree with me that the article by its title and substance focuses on legal issues relative to condemnation for energy corridors?

A. I would assume so, yes.

Q. I think you told me you didn't have a legal background, but do you have experience in researching case law or the opinions of the various courts within the United States?

A. No.

* * *

Q. My question is: Do you know that a court in Missouri has ruled that evidence of fear in the marketplace is admissible?

A. No, I am not aware of that.

Q. Okay. Do you have any experience or knowledge in the manner in which a court determines the admissibility of evidence?

A. I'm going to assume there are a number of qualifiers; but off the top of my head, to specifically know what a court looks at, no.

January 12, 2016 Depo. of Boyd Harris at 10:3-8; 84:14-20; 85:4-19.

¹² See Rebuttal Testimony of Boyd Harris, at 5:8-17.

III. Relief Sought:

Because his Rebuttal Testimony lacks foundation, consists of inadmissible hearsay and contains no relevant admissible evidence related to the issues in this case, the Commission should strike such testimony in its entirety. Specifically, the testimony stricken should include, but not be limited to, the summary opinion (see Rebuttal Testimony of Boyd Harris, at 3:2-8); the purported support for the summary opinion from Randolph County (see Rebuttal Testimony of Boyd Harris, at 3:9-4:1); any argument in support of a quantification of damages for the Mark Twain Transmission Project (see Rebuttal Testimony of Boyd Harris, at 4:2-14); the article “Condemnation for Energy Corridors: Selected Legal Issues and Acquisitions for Pipeline, Transmission Line and Other Energy Corridors (see Rebuttal Testimony of Boyd Harris, at 5:4-17); and the newspaper article "Couple: Northern Pass Kills Land Value" that appeared in the *New Hampshire Union Leader* in 2011 (see Rebuttal Testimony of Boyd Harris, at 5:18-6:7).

The article “Condemnation for Energy Corridors: Selected Legal Issues and Acquisitions for Pipeline, Transmission Line and Other Energy Corridors”¹³ should also be stricken, as the questions posed ask Mr. Harris to make or support legal conclusions which he is unqualified to make, and invade the province of the Regulatory Law judge and the Commission.

¹³ See Rebuttal Testimony of Boyd Harris, at 5:4-17

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the public version of the foregoing Motion to Strike has been e-mailed, this 20th day of January, 2016, to counsel for all parties of record.

/s/ Jeffrey K. Rosencrants

**An Attorney for Ameren Transmission
Company of Illinois**

Exhibit No.: 553

Issue: Impact on Land Values

Witness: Boyd L. Harris

Type of Exhibit: Rebuttal

Sponsoring Party: Matthew and
Christina Reichert

Case No.: EA-2014-0207

Date Testimony Prepared: September 15, 2014

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2014-0207

REBUTTAL TESTIMONY OF

BOYD L. HARRIS

ON BEHALF OF

MATTHEW AND CHRISTINA REICHERT

September 15, 2014

Exhibit No. 553
Date 11-10-2014 Reporter Stewart
File No. EA-2014-0207

Exhibit A

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

2 A: Boyd L. Harris.

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

4 A: I am a Real Estate Appraiser employed at AgriLand Appraisal Group. AgriLand
5 is a contract appraiser for Farmers National Company. My office is located at 1397 East
6 Highway 22, Centralia, Missouri, 65240.

7 **Q: What Licenses and Certifications do you hold?**

8 A: I am a Missouri State Certified General Real Estate Appraiser.

9 **Q: What is the focus of your practice?**

10 A: My practice has been focused on agricultural production and agri-business
11 properties since 1991.

12 **Q: What is your knowledge concerning the property of the Reicherts in relation
13 to the proposed Grain Belt Express transmission line?**

14 A: As I understand the Reichert's issue, the proposed easement will bisect their farm
15 and also be placed precariously close to their Bed and Breakfast enterprise.

16 **Q: What will be the effect of this transmission line on the value of the Reicherts'
17 property?**

18 A: It is my opinion that a power line easement of this magnitude will significantly
19 impact their real estate. This will come in one of two ways. First, a loss of income and
20 productivity from the crop land. There a number of ways this will happen, ranging from
21 the placement of towers impacting the functionality of the farm land, compaction from
22 construction limiting grain production, and lack of demand on the market due to the
23 foregoing impacts. Second, in their case, a lack of demand or use on the Bed and
24 Breakfast as a result of unsightly appearance of the power line, health concerns resulting

1 from stray voltage, etc.

2 **Q: What is your support for this opinion?**

3 A: The immediate support we would have on this position is a property in Randolph
4 County, Missouri. The property was a well located rural tract with good access, good
5 appearance, and nice amenities such as several small ponds. This tract was platted and
6 marketed for a rural residential subdivision during a time frame when there was a strong
7 demand for these tracts. The property was well exposed to the market by a local broker.
8 One lot was sold at one end of the property. Then the sales stopped. The lot that was
9 sold was the only one that was not near a large power line that bisected the tract. The
10 other lots were near the power line. Though there were potential buyers, none ever
11 purchased lots. The consistent reason for declining to buy was the power line.

12 **Q: What eventually happened to the property?**

13 A: Eventually, the owner was able to sell the parent (larger) tract. But only after he
14 agreed to vacate the plat and subdivision and return the land to a tract of agricultural
15 pasture or crop land.

16 **Q: Do you have any additional information to support this opinion?**

17 A: We have additional data that will be relevant but this is the most proximate
18 example of the economic damage that a project such as this can impart on a tract of
19 agricultural land. Within our office in Centralia and with my associates at Salisbury,
20 Missouri, and Lapeer, Michigan, we will be able to provide further support to value the
21 potential damages to the Reicherts' property.

22 **Q: How would you quantify the damages?**

23 A: The approach to quantifying this damage will be multi-pronged. First, a pairing
24 of sales of easement impacted versus non-easement land. Second, a consideration of lost

1 income to the property, capitalized to a value conclusion with appropriate methodology.

2 **Q: Would the harmful effect of this proposed transmission line on property**
3 **values be applicable to properties along the entire proposed route?**

4 A: It would be reasonable to assume that any property along the corridor would
5 suffer some of the same impacts. These could vary depending on type of land, proximity
6 of the line to building improvements, particularly a residence, or if a tract of land could
7 be irrigated and the towers would impede that improvement to the land; that would create
8 a significant economic impact of lost income from lost production as a result of not being
9 able to irrigate crop land.

10 **Q: Are you familiar with the studies that claim that transmission lines have**
11 **minimal or no effect on property values?**

12 A: Yes, to some limited degree. I have not had time to delve conclusively into the
13 matter. However, I have recently reviewed some white papers, shared by my LaPeer
14 colleagues, that contain some reference to studies that indicate there would be no
15 significant impact to real property values. But, in that paper, there was a greater
16 preponderance of studies that indicated there was significant negative impact to property
17 values, with studies from both coasts and the Southwest, to support damages.

18 **Q: Can you explain why your real life example is so different from from the**
19 **conclusions of these studies?**

20 A: Our real life example is significantly better than any of the studies because it is
21 clear evidence, in an adjacent county, on similar land, that the presence of the power line
22 was the primary reason that development tracts did not sell. This would certainly support
23 the position that there would be damage to the Reichert's Bed and Breakfast enterprise
24 and dwelling.

1 **Q: In this case, Grain Belt is offering market value for the easements. Is this**
2 **typical when land is taken through eminent domain?**

3 A: Land taken through eminent domain is typically, initially, considered at the market
4 value of the encumbered land. However, the precedent does seem to indicate that there
5 are nearly always damage considerations over and above the market value of the land.
6 While the Federal Standards for Land Acquisitions do not allow for the enhancement of
7 value to be considered as a result of a taking, there is certainly provision for damages as
8 compensation for the taking, over and above market value.

9 **Q: What is the typical multiplier for land taken through eminent domain?**

10 A: I don't know that there is such a thing as a "typical multiplier" for land taken in
11 condemnation. Each property is different, each case negotiated differently. Each property
12 would have to be considered in light of its own unique damages with those then factored
13 out based on the sales and market data. To say there is a "typical" factor would be
14 inherently difficult as there is no "typical" property.

15 **Q: Did you review any documents at the request of Matthew and Christina**
16 **Reichert?**

17 A: Yes. I reviewed "Condemnation for Energy Corridors: Selected Legal Issues in
18 Acquisitions for Pipeline, Transmission Line and Other Energy Corridors" by Eleasalo
19 Ale¹

20 **Q: Do you agree with the article's statement "The majority view among courts is**
21 **that evidence of fear in the marketplace is admissible with respect to the value of the**
22 **property taken without proof of the reasonableness of the fear"?**²

1 Eleasalo (Salo) V. Ale, *Condemnation for Energy Corridors: Selected Legal Issues in Acquisitions for Pipeline, Transmission Line and Other Energy Corridors*, Faegre & Benson LLP, February 2009, available at www.faegrebd.com/webfiles/Energy%20Corridors%20White%20Paper.pdf.

2 *Id.* at 11-12.

1 A: Yes.

2 **Q: Do you agree with the article's following statement "This appears to be the**
3 **best approach because it appropriately places the focus on the impact of the alleged**
4 **fear on property value, and shields the court from having to engage in analysis of**
5 **competing scientific views on issues where no scientific consensus exists, such as the**
6 **link between EMF and cancer and other health issues"?**³

7 A: Yes.

8 **Q: Did you read any other articles at the request of the Reicherts?**

9 A: Yes. I reviewed "Couple: Northern Pass kills land value" by Paula Tracy.⁴

10 **Q: Are the decreases in value listed in the following statement good examples of**
11 **the effect of transmission lines on property values? "In the case of the 135-acre**
12 **parcel, the property decreased in value by 63 percent from today's value. In the**
13 **smaller, 32-acre parcel of mostly fields, it concluded the decrease in value from high**
14 **voltage lines would be 84 percent, and for the 12.5-acre house lot, the decrease in**
15 **value would be 91 percent, taking it from an as-is value of \$68,000 to \$6,000."**⁵

16 A: Yes.

17 **Q: Is this the conclusion of your testimony?**

18 A: Yes.

3 *Id.* at 12.

4 Paula Tracy, *Couple: Northern Pass kills land value*, April 25, 2011, New Hampshire Union Leader, available at retasite.files.wordpress.com/2009/01/reta-union-leader-apr-25-2011.pdf.

5 *Id.* at 2.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

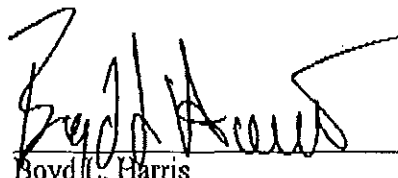
In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing it to Construct, Own, Operate,)
Control, Manage, and Maintain a High Voltage, Direct) Case No. EA-2014-0207
Current Transmission Line and an Associated Converter)
Station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

AFFIDAVIT OF BOYD L. HARRIS

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

Boyd L. Harris, being duly sworn under oath, states the following:

1. My name is Boyd L. Harris.
2. My Rebuttal Testimony is attached to this Affidavit and made a part of this Affidavit for all purposes.
3. My Rebuttal Testimony consists of eight pages including cover sheet and Affidavit and has been prepared in written form for introduction as evidence in Case No. EA-2014-0207.
4. I swear and affirm that my answers contained in the Rebuttal Testimony in response to those questions in the Testimony are true and accurate to the best of my knowledge, information, and belief.
5. I swear and affirm that any attachments to the Rebuttal Testimony are true and accurate to the best of my knowledge, information, and belief.


Boyd L. Harris

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

September 15, 2014

Karen Franco
NOTARY PUBLIC

My Commission Expires:

March 3, 2017

