

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 )

**GRAIN BELT EXPRESS CLEAN LINE LLC’S  
MOTION TO STRIKE REBUTTAL TESTIMONY OF CHRISTINA UMBRIACO**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”), 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 Christina Umbriaco (sponsored by the Reichert intervenors) because her testimony is irrelevant and because she lacks sufficient expertise to sponsor the drawings attached as Schedule CU-1 to her testimony.

**ARGUMENT**

**I. Legal Standard**

“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

652, 657 (Mo. App. E.D. 2001), citing Gaddy v. Skelly Oil Co., 364 Mo. 143, 259 S.W.2d 844, 853 (1953).

When considering an applicant’s request to be issued a line certificate of convenience and necessity under Section 393.170.1,<sup>1</sup> the Commission may grant such request under Section 393.170.3 if it finds that the construction of such a project “is necessary or convenient for the public service.”

The Commission has stated that it will apply five criteria to cases regarding CCN applications: (1) There must be a need for the service the applicant proposes to provide; (2) The proposed service must be in the public interest; (3) The applicant’s proposal must be economically feasible; (4) The applicant must have the financial ability to provide the service; and (5) The applicant must be qualified to provide the proposed service. In re Tartan Energy Co., No. GA-94-127, Order Granting Certificate of Convenience and Necessity (Sept. 16, 1994). See In re Entergy Arkansas, Inc., No. EA-2012-0321, Order Granting Certificate of Convenience and Necessity at 2 (July 11, 2012). Therefore, all relevant evidence must relate to one of these five criteria and the statutory standard of convenience and necessity. Evidence that does not relate to any of the five factors is irrelevant and must be excluded pursuant to Section 536.070(8).

## **II. Ms. Umbriaco’s Testimony Must Be Excluded**

Ms. Umbriaco’s rebuttal testimony should be stricken in its entirety because it is irrelevant and she lacks the necessary expertise to sponsor the drawing attached as Schedule CU-1 to her rebuttal testimony. Schedule CU-1 is a watercolor “rendering to as an accurate scale as possible of the placement of the proposed transmission towers on the property of Matt and Tina Reichert.” See Umbriaco Rebuttal at 2:13-15. However, any “rendering” of the “placement of

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<sup>1</sup> All references are to the Missouri Revised Statutes (2000), as amended.

the proposed transmission towers” on the Reicherts’ property is not relevant to any of the five Tartan factors.

More importantly, Ms. Umbriaco does not possess “sufficient expertise and acquaintance with the incident involved to testify as an expert.” See Watling, 211 S.W.3d at 208. Critically, Ms. Umbriaco admitted that art “has always been more of a side hobby rather than a career focus.” See Umbriaco Rebuttal at 2:5-9.

In response to data requests submitted by the Company Ms. Umbriaco stated that she is a “certified ophthalmic assistant” who has worked in the eye care field and has a degree in gender studies, but possesses no professional certification, training or degree in the graphic or professional arts. Indeed, she advised in responses to data requests from the Company that she has never “provided drawings or visual depiction for submission into evidence” in a judicial, regulatory, or governmental proceeding. See Response to No. 8 and Attachment 7-1, Reichert/Meyer Responses to Grain Belt Express First Data Requests, Ex. A.

As a result, Ms. Umbriaco’s drawing cannot be relied upon as expert evidence by the Commission and instead constitutes “mere conjecture and speculation.” Mueller, 54 S.W.3d at 657.

In sum, the Commission should strike Ms. Umbriaco’s testimony because (1) it is not relevant to the statutory standard or to any of the five criteria that the Commission will examine when ruling upon the Company’s CCN application; and (2) she lacks the expertise to offer the drawing into evidence. Therefore, Grain Belt Express requests that that the Commission exclude from evidence the testimony and attached schedules of Ms. Umbriaco.

