

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

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its Certificate)
Of Convenience and Necessity Authorizing it to) File No. EA-2023-0017
Construct, Own, Operate, Control, Manage, and)
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION d/b/a
MISSOURI ELECTRIC COMMISSION'S
POST-HEARING REPLY BRIEF**

The Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission (“MEC”) respectfully submits this Reply Brief to address assertions raised in the Missouri Landowners Alliance’s (“MLA”) Initial Post-Hearing Brief. Namely, its assertion the Commission should ignore the TEA study correctly admitted into evidence by Judge Dippell during the evidentiary hearing in this matter and relied upon by MEC’s expert witnesses. MLA made similar objections during the evidentiary hearing which were overruled. Such arguments should once again be disregarded as they have no basis in law.

I. Missouri Law Clearly Allows for MEC’s Experts to Rely on the TEA Study and Supports Judge Dippell’s Ruling to Admit the Study into Evidence.

MEC consulted with The Energy Authority (“TEA”) for its independent strategic perspective, advice, analysis and projected effect of the Amended Grain Belt project on locational marginal pricing (“LMP”) at certain Missouri nodes identified by MEC as significant to its members.¹ TEA then prepared a study, upon which MEC’s expert witnesses Rebecca Atkins, Chief Markets Officer of the Missouri Public Utility Alliance (MPUA), and John Grotzinger, Chief Electric Operations Officer of the MPUA, relied substantiating their

¹ See Exhibit 701. Rebuttal Testimony of Rebecca Atkins, p. 7, ln. 9-14; Schedule RA-3; Exhibit 702, Rebuttal Testimony of John Grotzinger, p. 9, ln. 20 – p. 10, ln. 4; Schedule JG -14.

conclusions that the Amended Grain Belt project would cause an overall decrease in marginal energy costs in MISO.²

Both Rebecca Atkins and John Grotzinger relied on the TEA study in forming the opinions expressed in their pre-filed rebuttal testimony and Ms. Atkins specifically testified she “found the entire study to be reasonably reliable.”³ The TEA study was attached as schedules to both Ms. Atkins’ and Mr. Grotzinger’s pre-filed rebuttal testimony.⁴ The pre-filed testimony relying on the TEA study, as well as the TEA study itself, were admitted into evidence over MLA’s counsel’s objections as Exhibits 701 and 702 during the evidentiary hearing on June 8, 2023.⁵

Slide 10 of the TEA study showed that as compared to “business as usual,” the addition of Grain Belt will cause the average annual LMP to drop at each of the pricing nodes Rebecca Atkins and John Grotzinger identified as relevant to MEC’s members, including the nodes used by MoPEP, Centralia, Columbia, Hannibal, and Kirkwood.⁶ Slide 15 of the TEA study showed that in 2028, the first full year of Grain Belt’s operation, the marginal energy component of all LMPs across the MISO footprint will decrease on average by \$1.77 per megawatt hour.⁷ The price drop will result in over \$1.1 billion in marginal energy savings for the MISO load.⁸

During the evidentiary hearing, MLA’s counsel objected to the admission of the TEA study and testimony relying thereon arguing that the study amounted to hearsay, that no foundation was laid for inclusion of the study, and that the individual authoring the study was not

² See Exhibit 701. Rebuttal Testimony of Rebecca Atkins, p. 7, ln. 9-17; Schedule RA-3; Exhibit 702, Rebuttal Testimony of John Grotzinger, p. 9, ln. 20 – p. 10, ln. 4; Schedule JG -14.

³ See *id.*

⁴ See *id.*

⁵ See Tr. 1073:12-22; Tr. 1078:15-1079:16.

⁶ See Exhibit 701. Rebuttal Testimony of Rebecca Atkins, p. 7, ln. 17-21; Schedule RA-3.

⁷ See Exhibit 701. Rebuttal Testimony of Rebecca Atkins, p. 7, ln. 21-23; Schedule RA-3.

⁸ See Exhibit 701. Rebuttal Testimony of Rebecca Atkins, p. 7, ln. 23 – p. 8, ln 1; Schedule RA-3.

at the hearing to support it.⁹ MEC's counsel responded arguing §490.065 RSMo. on expert witness opinion testimony applied and supported admission of the testimony and study into evidence.¹⁰ Specifically, §490.065 RSMo provides:

[T]he facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.¹¹

The same statute further provides that:

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.¹²

Because Ms. Atkins and Mr. Grotzinger both testified in their pre-filed testimony that they found the TEA study to be reasonably relied upon by experts in the field performing the work they do every day, MEC's counsel argued MLA's objection was not lawfully grounded.¹³ Judge Dippell ultimately agreed with MEC's counsel, overruled the objection, and admitted the testimony and TEA study into evidence and into the record.¹⁴

Despite Judge Dippell's legally correct ruling admitting the testimony and TEA study, MLA's Initial Post-Hearing Brief argues the Commission should "ignore" the TEA study because it "lacks any semblance of reliability or credibility."¹⁵ Such arguments should be disregarded by the Commission as they have no basis in law.

⁹ Tr. 1067:14-1068:1.

¹⁰ Tr. 1068:15-1069:2

¹¹ Tr. 1068:15-1069:2; §490.065.1(3) RSMo.

¹² Tr.1069:2-10; §490.065.2(2) RSMo.

¹³ Tr. 1069:11-16.

¹⁴ See Tr. 1073:12-22; Tr. 1078:15-1079:16.

¹⁵ See MLA's Initial Post-Hearing Brief at p. 31.

Missouri courts have long recognized that documents that form the basis of an expert's opinion may be admissible under §490.065 RSMo.¹⁶ In the 2019 *Mo. Landowners Alliance v. Public Service Commission* case, MLA's attorneys appealed the Commission's Report and Order, in part based on the admission of three documents into evidence at the evidentiary hearing which served as the basis for experts' opinions.¹⁷ The Eastern District Court of Appeals found there was no error in admitting the documents as the Commission admitted the three documents under §490.065 RSMo. because, similarly to the instant matter, they served as the basis for the experts' opinions.¹⁸ In no instance did MLA object that any of those three documents were not the type of information reasonably relied on in forming opinions, or that they were otherwise unreliable.¹⁹ Because the witnesses provided testimony based on the documents that they were the type of information reasonably relied on in forming their opinions, were otherwise reasonably reliable, and MLA failed to challenge that fact, the Court determined MLA failed to meet its obligation to show by clear and satisfactory evidence that the Commission's Report and Order was not based on competent and substantial evidence.²⁰

The same is true in the matter now pending before the Commission. MLA has provided no contradictory evidence and there was no cross-examination of MEC's witnesses challenging the reliability of the TEA study by any party. Similarly, no party challenged the testimony of any of MEC's witnesses on any subject with pre-filed testimony. MLA's Initial Post-Hearing Brief contains argument unsupported by any expert opinion or any other evidence regarding the TEA study's reliability, but this is mere conjecture from counsel. There has been no evidence of any

¹⁶ See *Mo. Landowners All. v. Pub. Serv. Comm'n*, 593 S.W.3d 632, 643 (Mo. App. E.D. 2019) citing *Klotz v. St. Anthony's Medical Ctr.*, 311 S.W.3d 752, 764 (Mo. banc 2010).

¹⁷ See *Mo. Landowners All.*, 593 S.W.3d at 643.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.*

type from any party or witness challenging the reliability of the TEA study. There is thus no basis to disregard the TEA study. Likewise, there is no legal justification for MLA's arguments, as evidenced by the lack of any citations to legal authority backing its argument the TEA study and accompanying testimony should be ignored. MEC laid the proper foundation for admission of the TEA study and expert testimony relying on the study into evidence. Judge Dippell correctly admitted the study and testimony into evidence.

II. Conclusion.

The TEA study and testimony relying thereon was correctly admitted into evidence during the evidentiary hearing pursuant to the requirements of §490.065 RSMo. As admitted evidence, it should not be ignored as MLA now asks the commission to do. This evidence should be considered by the Commission along with all the other evidence admitted into the record. As previously set forth in MEC's Initial Post-Hearing Brief, the full evidentiary record in this case overwhelmingly favors this Commission granting each Amendment requested by Grain Belt. On behalf of its 72 Missouri municipal members and combined 350,000 Missouri retail customers, MEC respectfully requests that this Commission issue its Report and Order granting the same.

Respectfully Submitted,

By: /s/ Alex C. Riley

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ATTORNEYS FOR MEC

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2023 a copy of the foregoing **Missouri Joint Municipal Electric Utility Commission d/b/a Missouri Electric Commission Post-Hearing Reply Brief** has been served on all parties on the official service lists for this matter via filing in the Commission's EFIS system and/or email.

/s/ Alex C. Riley

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