

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 BOYD HARRIS**

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 Boyd Harris (sponsored by the Reichert intervenors) because he lacks sufficient expertise to opine regarding the subject of his testimony. Other portions of his testimony are irrelevant, lack sufficient foundation and call for a legal conclusion.

ARGUMENT

“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).

Mr. Harris's rebuttal testimony should be stricken in its entirety because he lacks the necessary expert experience to render his opinions on the subject of the effect of the Company's transmission line project on the Reicherts' property. Mr. Harris seeks to opine that:

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

See Harris Rebuttal at 2:18-3:2.

Yet, when Mr. Harris was asked in a data request to "provide a list and describe the appraisals where [he] provided opinions on land parcels impacted by power lines," he stated: "For a specific example, I don't really have that. There have been so many appraisals over the past few years that to go back and find one specifically would be a challenge." See Response to No. 2, Reichert/Meyer Responses to Grain Belt Express First Data Requests, Ex. A.

Similarly, when asked in his prefiled testimony if he was "familiar with the studies that claim that transmission lines have minimal or no effect on property values," he stated that he was familiar only to "some degree" and that he had "not had time to delve conclusively into the matter." Id. at 4:10-13.

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.

Finally, Mr. Harris's commentary on an article appearing on a non-Missouri law firm's website and a New Hampshire newspaper article regarding a transmission project in New England (Page 5:15 to Page 6:16) are wholly improper and should be stricken. It is improper for a non-lawyer such as Mr. Harris to comment on an article regarding "selected legal issues" that discusses the admissibility of evidence in condemnation cases. The question posed calls for a legal conclusion, and the answers invade the province of the Regulatory Law judge and the Commission. See Harris Rebuttal at 5:15 to 6:7.

The last question posed to Mr. Harris asks him to comment on a newspaper article that discusses a transmission line located far from Missouri. Given that he has admitted in response to the Company's Data Request No. 2 that he cannot recall even one specific example of providing an opinion on land parcels affected by power lines, there is no foundation for the question which, therefore, calls for speculation. The question and answer should be excluded from evidence. See Harris Rebuttal at 6:8 to 6:16.

CONCLUSION

For these reasons, the Commission should exclude the rebuttal testimony of Boyd Harris in its entirety.

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ATTORNEYS FOR GRAIN BELT EXPRESS
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 7th day of November 2014.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC