

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-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

OPPOSITION OF THE MISSOURI LANDOWNERS ALLIANCE
TO MJMEUC’S MOTION TO COMPEL ANSWERS
TO DATA REQUESTS DIRECTED TO JOSEPH J. JASKULSKI

Comes now the Missouri Landowners Alliance (MLA), pursuant to Rule 4 CSR 240-2.080(13), and for the reasons set forth below respectfully asks the Commission to deny the “Missouri Joint Municipal Electric Utility Commission’s Motion to Compel Missouri Landowners Alliance’s Answers to Data Requests Directed to Joseph J. Jaskulski”, filed on March 7, 2017.

MJMEUC’s data requests to Mr. Jaskulski included 34 different items. He initially answered 25 of them, leaving nine which were the subject of MJMEUC’s Motion to Compel. Mr. Jaskulski has since answered one additional item, number JJ.6. His response is attached as Exhibit A hereto.¹ Thus MJMEUC’s Motion with respect to JJ.6 is moot, and will not be addressed here further by the MLA. In the order addressed by MJMEUC, that leaves the following items still in dispute: JJ.4, JJ.5, JJ.31, JJ.9, JJ.10, JJ.11, JJ.12 and JJ.13.

The MLA has no quarrel with the general propositions regarding discovery set forth in MJMEUC’s Motion to Compel; e.g., that discovery may be had of an expert’s

¹ Shortly before MJMEUC filed its Motion to Compel, Counsel for the MLA informed counsel for MJMEUC that this supplemental response for JJ.6 would be forthcoming.

qualifications prior to trial; that discovery may be had of a witness's possible bias; and that discovery requests which are properly limited in time and subject matter are not overly burdensome.

However, the law supporting the MLA's objections regarding vagueness and ambiguity is every bit as settled as the case law cited by MJMEUC. As the Missouri Supreme Court has stated, interrogatories "should not call for opinions or the conclusions of the person interrogated or require him to resort to speculation or conjecture as to what is intended. *State ex rel. Hof v. Cloyd*, 394 S.W.2d 408, 411 (Mo banc 1965).

Furthermore, as stated in *Dunn v. Wal-Mart Stores, Inc.*, 909 S.W.2d 728, 732 (Mo App 1995): "Interrogatories should be presented in language of unmistakable meaning, otherwise they can become a tool for entrapment of the unwary. Interrogatories should not call for opinions or conclusions of the person interrogated or require him to resort to speculation or conjecture as to what is intended." (Internal citation omitted)

As discussed below, the data requests at issue here were not presented in language of "unmistakable meaning", and would indeed require that Mr. Jaskulski resort to "speculation or conjecture" in attempting to answer the questions propounded to him.

JJ.4 asks Mr. Jaskulski to identify the authors or sources that he finds authoritative "to assess the need for new facilities necessary for adequate and reliable power system operation." With no further clarification from MJMEUC, any attempt to provide an answer to this question would clearly require Mr. Jaskulski to resort to speculation or conjecture as to what sources he is being asked to identify. Conceivably, the question could encompass every aspect of system planning. The question is vague

and ambiguous, and certainly is not of “unmistakable meaning.” Mr. Jaskulski has a right to know what is being asked of him before he tries to formulate a response.

JJ.5 is similar to JJ.4, except that the question asks about sources which address the need for new facilities necessary for the public benefit. Without any indication of what MJMEUC views as the “public benefit”, there is no way to logically answer this question. Like JJ.4, it is vague and ambiguous.

JJ.31 asks Mr. Jaskulski to “identify all reasons or situations which do justify the compromise of property rights of landowners in the state of Missouri.” First, identifying all of the reasons which justify the compromise of property rights can logically be answered only by resort to a legal analysis of the circumstances under which property rights may be “compromised.” Hence the MLA’s objection that the question calls for a legal conclusion.

In addition, the question is not restricted to reasons related in any way to the construction of electrical facilities. As stated, it encompasses any reason regardless of the context in which the property rights are being compromised. Thus the question is clearly overly-broad in its scope.

Finally, the term “compromise of property rights” is hardly language of “unmistakable meaning.”

JJ.9 asks if Mr. Jaskulski has a preference for one type of power generation over another. Without further context, the question is impossible to answer in any meaningful sense. Is his preference supposed to take into account the price of the generation, the availability of the generation, the environmental aspects of the generation, and all of the other variables which would logically impact the answer to that question?

This is clearly a case where the vagaries of the question can “become a tool for entrapment.”

JJ.10 asks Mr. Jaskulski if he agrees that generators, shippers, ratepayers and others have different preferences for one type of power generation over another. The MLA’s response to the previous item is equally applicable here. In addition, this question runs afoul of the dictates of *State ex rel. Hof, supra*, which prohibits questions which call for opinions or conclusions of the person being interrogated. And that problem in turn suggests one final reason why this question is objectionable: whether or not Mr. Jaskulski personally agrees or disagrees with the proposition set forth in JJ.10 has no relevance to this proceeding.

JJ.11 asks if Mr. Jaskulski agrees that Grain Belt can provide a low cost transmission path from SPP to MISO. Without first defining what is meant by “low cost”, this question clearly is vague and ambiguous. A simple yes or no answer, which is what is asked for here, is totally meaningless. Or if answered, Mr. Jaskulski would do so at his own peril. The term “low cost” is not one of “unmistakable meaning”. It should have been defined by MJMEUC, and not left to Mr. Jaskulski to wonder what was really being asked of him.

JJ.12 asks if Mr. Jaskulski agrees that Grain Belt can provide “a lower cost transmission path from SSP to Ameren.” This item is objectionable for the same reasons given in response to JJ.10. It is made all the more objectionable by the unanswered question which is raised by the data request: “lower than what”?

JJ.13 asks if the contracts between MJMEUC, Grain Belt and Infinity Wind provide “low-cost” renewable energy to Missourians. The fault with this question is the

same as with JJ.11 and JJ.12, and the MLA incorporates the same response as given thereto. In all three cases, MJMEUC rendered the questions vague, ambiguous and meaningless by failing to define “low cost”, thus forcing Mr. Jaskulski to answer yes or no in a vacuum of uncertainty. “Interrogatories should be presented in language of unmistakable meaning”, which is not the case here.

MJMEUC was aware from the outset of the MLA’s objections regarding the ambiguity of the questions discussed above. They chose not to clarify those questions, and should not be rewarded now for choosing not to do so.

WHEREFORE, the MLA respectfully asks the Commission to deny MJMEUC’s Motion to Compel, which was filed on March 7, 2017.

Respectfully submitted,

/s/ Paul A. Agathen
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 13th day of March, 2017.

/s/ Paul A. Agathen

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line.)

**SUPPLEMENTAL RESPONSE OF JOSEPH JASKULSKI TO
FIRST SET OF DATA REQUESTS FROM
MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

Data Request JJ.6

Please identify the authors or sources, if any, that you find authoritative to assess the need for new facilities necessary for Missouri utilities to meet their renewable energy standard requirements, or other similar laws or ordinances.

RESPONSE: I did not look at the issue of how Missouri utilities might meet their renewable energy standard requirements, and do not know of any source which I can say is authoritative on that subject.

