

**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 ) Case No. EA-2016-0358  
Voltage, Direct Current Transmission Line )  
and an Associated Converter Station )  
Providing an Interconnection on the )  
Maywood-Montgomery 345 kV )  
Transmission Line. )

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION'S MOTION TO  
COMPEL MISSOURI LANDOWNERS ALLIANCE'S ANSWERS TO DATA  
REQUESTS DIRECTED TO JOSEPH J. JASKULSKI**

Missouri Landowners Alliance's ("MLA's") expert witness, Joseph J. Jaskulski, has declined to answer nine of MJMEUC's data requests because MLA's counsel has objected to those data requests. Three of the data requests at issue go to Mr. Jaskulski's qualifications, three of the data requests address any bias that he may have regarding the issues in this matter, and the remaining three data requests at issue are properly-framed and simply not objectionable. Thus, under Missouri law which permits discovery of an expert's opinions, qualifications and any bias, MLA's counsel's objections are not well-grounded. Counsel for MJMEUC and MLA conferred on March 7, 2017 but could not resolve this discovery dispute. MLA's counsel's objections should be overruled, and Mr. Jaskulski should be compelled to respond fully.

**Missouri law permits discovery of an expert's *qualifications*, because an expert must be qualified to testify at trial as to his or her opinion:**

Missouri statutory law provides that only a witness who is "*qualified* as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion

or otherwise.”<sup>1</sup> This statutory requirement for qualified experts governs administrative cases, such as this matter, as well as civil cases in circuit court.<sup>2</sup> Missouri’s rules of civil procedure further provide that discovery may be had of an expert’s qualifications prior to that expert testifying at trial.<sup>3</sup> An expert’s qualifications (or lack thereof) may be revealed by inquiring on cross examination if he or she relies on, agrees with or disagrees with authoritative authors, sources, texts or books.<sup>4</sup> And, an expert may be requested through discovery prior to trial to identify the authors, sources, texts or books which he or she finds authoritative, so that cross examination at trial may occur.<sup>5</sup>

Consistent with this settled Missouri law, MJMEUC propounded three data requests to discover Mr. Jaskulski’s qualifications by asking him to identify the authors or sources he finds authoritative. Those three requests, along with MLA’s counsel’s objections filed in this matter on March 1, 2017, are set forth here for the Commission’s convenience:

*JJ.4 Please identify the authors or sources, if any, that you find authoritative to assess the need for new facilities necessary for adequate and reliable power system operation.*

**Objection: the question is vague, ambiguous and overly-broad.**

*JJ.5 Please identify the authors or sources, if any, that you find authoritative to assess the need for new facilities necessary for the public benefit.*

**Objection: the question is vague, ambiguous and overly-broad.**

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<sup>1</sup> Revised Statutes of Missouri §490.065(1) (Emphasis added)

<sup>2</sup> *State Board of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 155 (Mo. 2003)

<sup>3</sup> Rule 56.01(b)(4)(a), Missouri Rules of Civil Procedure

<sup>4</sup> *Gridley v. Johnson*, 476 S.W.2d 475, 481 (Mo. 1972)

<sup>5</sup> *Powers v. Ellfeldt*, 768 S.W.2d 142, 148 (Mo. App. W.D. 1989)

*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.*

**Objection: the question is vague, ambiguous and overly-broad.**

MJMEUC's three requests to MLA's expert Mr. Jaskulski go directly to the discovery of his qualifications and are thus proper requests under Missouri law. MLA's counsel's generalized objections of vagueness, ambiguity and overbreadth are simply not well-grounded – Mr. Jaskulski surely knows what, if any, authors or sources he considers authoritative regarding the expert testimony he intends to offer to this Commission at trial. MLA's objections should be overruled, and Mr. Jaskulski should be compelled to respond fully to MJMEUC's data requests JJ.4, JJ.5 and JJ.6.

**Missouri law permits discovery of an expert's *bias*, because a testifying expert's bias is always the proper subject of cross-examination at trial:**

At trial, cross examination of an opponent's expert witness "to determine possible bias or motive is permissible and its parameters are within the broad discretion of the trial court."<sup>6</sup> Evidence of bias or prejudice on the part of a testifying expert is always properly allowed by a trial court.<sup>7</sup> In order to present evidence at trial of the bias of an opponent's expert, if indeed such bias exists, discovery must be had of that expert prior to trial. Mr. Jaskulski's pre-filed testimony indicates a potential bias toward individual landowners, or a potential bias against utilities and their ratepayers. Mr. Jaskulski's pre-filed testimony also indicates a potential bias for one type of power generation over another. Thus, MJMEUC propounded the following three

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<sup>6</sup> *State v. Zink*, 181 S.W.3d 66, 72 (Mo. 2005)

<sup>7</sup> *Brantley v. Sears Roebuck & Co.*, 959 S.W.2d 927, 929 (Mo. App. E.D. 1998)

data requests to Mr. Jaskulski, and on March 1, 2017 MLA's counsel lodged the following objections:

*JJ.31 Please identify all reasons or situations which do justify the compromise of property rights of landowners in the state of Missouri.*

**Objection: the question is vague, ambiguous, overly-broad and calls for a legal conclusion.**

*JJ.9 Do you have a preference for one type of power generation over another? If your answer is affirmative, please identify your preference(s) and the circumstances in which those preference(s) apply.*

**Objection: the question is vague, ambiguous and overly-broad, and any response would not be relevant to the subject matter involved in the pending proceeding and not reasonably calculated to lead to the discovery of admissible evidence.**

*JJ.10 Do you agree that generators, shippers, ratepayers and others have different preferences for one type of power generation over another? If your answer is negative, please explain.*

**Objection: the question is vague, ambiguous and overly-broad, and any response would not be relevant to the subject matter involved in the pending proceeding and not reasonably calculated to lead to the discovery of admissible evidence.**

Again, MLA's counsel's generalized objections of vagueness, ambiguity and overbreadth simply do not apply to these three data requests that seek to discover any bias on Mr. Jaskulski's part prior to Mr. Jaskulski testifying before this Commission in this matter. And, counsel's

objection that these three requests are irrelevant or not reasonably calculated to lead to the discovery of admissible evidence is simply wrong – Missouri law is well settled that an expert’s bias is always relevant, always discoverable and always admissible at trial. MLA’s counsel’s objections should be overruled, and Mr. Jaskulski should be compelled to fully respond to MJMEUC’s data requests JJ.31, JJ.9 and JJ.10.

**MJMEUC’s Data Requests are specific as to the time period, facts and documents relevant to this matter and are thus not objectionable:**

Missouri law provides the right to discover any relevant information, including information reasonably calculated to lead to the discovery of admissible evidence.<sup>8</sup> Discovery requests that are limited to the time frame relevant to the case, limited to the subject matter of the case, and limited to the issues raised in the case are *not* overbroad, burdensome or oppressive.<sup>9</sup> Similarly, discovery requests that specifically reference the time frame relevant to the case, particular documents relevant to the case and issues raised in the case are *not* vague or ambiguous, and response is required.<sup>10</sup> Consistent with this Missouri law, MJMEUC served the following, specifically-framed data requests to Mr. Jaskulski, but on March 1, 2017 MLA’s counsel objected as follows:

*JJ.11 Do you agree that, as presented in this case by GBX, GBX can provide a low cost transmission path from SPP to MISO? If your answer is negative, please explain.*

**Objection: the question is vague, ambiguous and overly-broad.**

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<sup>8</sup> *State ex rel. Crowden v. Dandurand*, 970 S.W.2d 340 (Mo. 1998)

<sup>9</sup> *State ex rel. Kawasaki Motors Corp., U.S.A. v. Ryan*, 777 S.W.2d 247 (Mo. App. 1989)

<sup>10</sup> *Herman v. Andrews*, 1999 Mo. App. LEXIS 2441 \*13, \*16

*JJ.12 Do you agree that, as presented in this case by GBX, GBX can provide a lower cost transmission path from SPP to Ameren? If your answer is negative, please explain.*

**Objection: the question is vague, ambiguous and overly-broad.**

*JJ.13 Do you agree that the contractual arrangements between GBX, MJMEUC and Iron Star Wind provide low-cost renewable energy to Missourians? If your answer is negative, please explain.*

**Objection: the question is vague, ambiguous and overly-broad.**

MLA's counsel's objections that these three data requests are vague, ambiguous or overly-broad is simply wrong because MJMEUC specifically drafted its data requests to incorporate the specific time period, facts and documents relevant to this case. Pursuant to the Missouri law addressed in this motion, MLA's counsel's objections should be overruled and Mr. Jaskulski should be compelled to fully respond to data requests JJ.11, JJ.12 and JJ.13.

**Conclusion:**

MJMEUC respectfully requests that MLA's counsel's objections to data requests JJ.4, JJ.5, JJ.6, JJ.31, JJ.9, JJ.10, JJ.11, JJ.12 and JJ.13 be overruled, and that MLA's expert Mr. Jaskulski be compelled to fully respond to these nine data requests.

Respectfully Submitted,

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**ATTORNEYS FOR MJMEUC**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Missouri Joint Municipal Electric Utility Commission's Motion to Compel Missouri Landowners Alliance's Answers to Data Requests Directed to Joseph J. Jaskukski was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 7<sup>th</sup> day of March, 2017:

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