

**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)

**SHOW ME’S OPPOSITION TO GRAIN BELT EXPRESS’ MOTION TO STRIKE
INTEVENOR SHOW ME WITNESS RON CALZONE’S REBUTTAL TESTIMONY**

Comes now Show Me Concerned Landowners (“Show Me”), by and through its counsel, and states its opposition to Grain Belt Express’ Motion to Strike Intervenor Show Me Witness Ron Calzone’s Rebuttal Testimony (“Motion to Strike”):

1. On January 24, 2017, Show Me filed the rebuttal testimony of Ron Calzone.
2. On March 14, 2017, Grain Belt Express filed its Motion to Strike. Grain Belt argues that Mr. Calzone’s testimony is merely legal argument regarding property rights and eminent domain law as interpreted by a non-lawyer. Nothing could be further from the truth.
3. Grain Belt’s misrepresentation of Mr. Calzone’s testimony does not change the truth. Mr. Calzone’s testimony is not a legal opinion. It is an expert’s discussion of historical facts. It is expert opinion this Commission has the discretion to hear.
4. The law in this case is stated in Section 393.170, Mo. Rev. Stat. (2000), that the applicant in a case for a CCN must show that the subject project is necessary or convenient for the public service. “Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest.” *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597 (Mo. App.W.D., 1993). Since the public

interest is in the discretion of the Commission, the public interest is a factual determination. If it was not, it would not be in the discretion of the Commission. And finally, the last element of the Tartan test is that, “the service must promote the public interest .”¹ The Commission referred to these factors as “criteria to be used in evaluating such applications.” Mr. Calzone’s testimony does not address the Commission’s legal authority in this case, but it does address one of the criterion just as all of Grain Belt’s witnesses do, the public interest.

5. Mr. Calzone’s testimony relates to the public interest in this case. He makes no claim that the Commission lacks authority to act. He states the purpose of his testimony as, providing “a historical background to the understanding of the value of our property rights in the United States and the state of Missouri.” Rebuttal Testimony of Ron Calzone, p. 2, l. 8, 9. His conclusion is that, “in evaluating the public interest in granting an application for a Certificate of Public Convenience and Necessity, the supreme public interest is protecting the property rights of the landowners of the state of Missouri.” Rebuttal Testimony of Ron Calzone, p. 2, l. 12-15. The substance of his testimony relates to history. He does refer to court opinions and constitutional provisions, but he does so as historical facts.

6. Grain Belt argues that Mr. Calzone’s testimony is a “brief.” It presents the definition of “Brief” from Black’s Law Dictionary and summarily concludes the testimony is a brief. But reading the definition, the plain terms refute Grain Belt’s claim. A brief is, “A written statement prepared by the counsel arguing the case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting counsel's position.” The first sentence clearly does not describe Mr. Calzone’s testimony. As to

¹ *In re Tartan Energy Co.*, 3 Mo P.S.C. 173, 177 (1994).

the second sentence, Mr. Calzone's testimony does not refer to section 393.170 RSMo. or the Tartan factors, the law in this case. The process of applying the facts as Mr. Calzone has presented them will fall to the lawyers to argue. The undersigned has already used these facts in Show Me's statement of position, filed on March 13. See Show Me Concerned Landowners' Position Statement, p. 4.

7. The *Baldrige* case, Grain Belt Express cites, observes that,

Section 490.065.4, RSMo Cum.Supp.1992 provides: "If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, ..." Our reading of Russell's testimony reveals that he did not tell the jury his own "version" of the facts, but rather told the jury the facts upon which he based his opinions. Further, these facts had already been adduced into evidence.

Defendants' assertion that Russell was allowed to speculate as to what a trial court might have awarded and to testify as to conclusions of law also lacks merit. Our review of Russell's testimony reveals that it was offered as his opinion and not as a conclusion as to what a trial court would award. As in *Bross*, Russell testified about matters with which the jurors were not likely to be conversant, his testimony was helpful to them in determining issues before them, and his testimony was admissible as an exception to the general rule that witnesses may not express their opinions. *Bross*, 791 S.W.2d at 421. The trial court did not abuse its discretion in allowing Russell's testimony. Point denied.²

As in *Baldrige*, Mr. Calzone presented the facts and offered his opinion of those facts. His testimony is helpful in providing a history and is helpful in presenting the value Missouriian's place on private property rights, which all speak to the public interest in this case. The Commission has the discretion to allow Mr. Calzone's testimony.

8. Mr. Calzone has the credentials to present his opinion in this case, as are laid out in his rebuttal testimony. If Grain Belt wishes to challenge those credentials, it may do so in cross examination.

9. Mr. Calzone's testimony relates to the factual issue of the public interest impact in

this case. Quite frankly, the Commission needs to hear more of this kind of testimony. Grain Belt Express assumes without discussion that its tax payments should be considered a public interest benefit. Show Me posits the question why using regulated companies as tax collectors for the state or why an offer of services as a tax collector for the state should influence the state's decision in this case are in the public interest. These are questions of public interest and not simply law.

WHEREFORE, Show Me requests that the Commission deny Grain Belt's motion to strike the Rebuttal Testimony of Show Me witness Ron Calzone.

Respectfully submitted,

By: /s/ David C. Linton

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Compel was sent to all parties of record in File No. EA-2016-0358 via electronic transmission this 16th day of March, 2017.

/s/ David C. Linton

² *Baldrige v. Lacks*, 883 S.W.2d 947, 955 (Mo. App. E.D., 1994)