

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

**MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT'S
RESPONSE TO MISSOURI LANDOWNERS ALLIANCE MOTION TO STRIKE**

The Missouri Landowners Alliance's ("MLA") motion to strike certain portions of the pre-filed testimony of Barbara Meisenheimer and Alan Spell should be denied. At best, the motion retreads the same issues that this Commission already passed on during Case No. EA-2014-0207, where a near identical motion was filed against Grain Belt Express's expert witnesses. There, the Commission correctly held that MLA's motion improperly conflated issues of admissibility with issue of weight and denied the motion. See Tr. Vol. 10 at 25:4-7, Case No. EA-2014-0207 (Nov. 10, 2014) ("Any complaints about the sources of the facts and data upon which the witnesses rely will go to the weight, not the admissibility of their testimony, so the motion is denied as to the testimony.") The same considerations caution against granting MLA's motion in this matter. In the interest of putting forward a full and complete record, MLA's motion must be denied.

At the heart of MLA's motion is Sec. 536.070 which pertains to "results of statistical examinations or studies, or of audits, compilations of figures, or surveys." MLA argues that since Mr. Spell and Ms. Meisenheimer "rely" on the data contained within a study by Dr. David Loomis (the "Loomis Study"), Sec. 536.070 would render the testimony inadmissible. The argument goes that since neither Mr. Spell or Ms. Meisenheimer actually gathered the underlying

data of the Loomis Study, the portions of testimony that refer to it are inadmissible. This is not so.

The Commission is not bound to the technical rules of evidence and may exercise broad discretion in the admissibility of evidence. Deaconess Manor Ass'n v. PSC, 994 S.W.2d 602, 611 (Mo. App. W.D. 1999); *See also* Sec. 386.410.1, RSMo. Given that there is no jury to be misled and that the Commission has specialized expertise in the matters before it,¹ there is no need to approach evidentiary matters with an overly meticulous lens. “Usually, an expert witness' opinion testimony is based upon facts that the expert did not personally observe and of which the expert did not have personal knowledge.” CADCO, Inc. v. Fleetwood Enterprises, Inc., 220 S.W.3d 426, 434 (Mo. App. E.D. 2007).

At best, the MLA's motion is directed to questions of weight and not questions of admissibility. Any question to the reliability of data or figures relied by DED's witnesses can only affect the weight, not the admissibility, of the opinion. Doe v. McFarlane, 207 S.W.3d 52, 62 (Mo. App. E.D. 2006). “If the facts and data are shown to be reasonably relied upon by experts in the field, they are necessarily relevant to the issue the expert is addressing.” Murrell v. State, 215 S.W.3d 96, 112 (Mo. banc 2007). In such as case, “[t]he *only* way to attack the admissibility of that information is to show that the facts and data are not the type experts in the field are relying on or are not reliable.” *Id.* (emphasis added) Here it is clear that the Loomis study is exactly the type of data that is reasonably relied on by experts like Mr. Spell and Ms. Meisenheimer. Thus, there is no basis to strike the portions of the testimony referenced in the motion.

¹ “[As] a fact-finding body, exclusively entrusted and charged by the Legislature to deal with and determine the specialized problems arising out of the operation of public utilities, and the commission has a staff of technical and professional experts to aid it in the accomplishment of its statutory powers.” State ex rel. Chicago, Rock Island & Pac. R.R. v. PSC, 312 S.W.2d 791, 796 (Mo. 1958).

There certainly is no undue prejudice to MLA in denying the motion. MLA does not argue that it was denied access to the underlying figures and data upon which DED's witnesses base their testimony. Similarly, MLA does not claim that it is ignorant of the content of the Loomis Study itself, or present evidence that it is unreliable. To the extent that MLA wishes to contest the testimony of Mr. Spell and Ms. Meisenheimer, it may do so on the merits. All of DED's witnesses will be present for live cross-examination during the hearing. To the extent that MLA wishes to attack the validity and weight Mr. Spell and Ms. Meisenheimer's testimony, MLA has the ability and opportunity to do through the normal hearing process.

The motion should be denied.

Respectfully submitted,

/s/ Brian Bear

Brian Bear, Bar #61957

General Counsel

Missouri Department of Economic Development

P.O. Box 1157

Jefferson City, MO 65102

Phone: 573-526-2423

E: brian.bear@ded.mo.gov

**Attorney for Missouri Department of Economic
Development**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 16th day of March, 2017.

/s/ Brian Bear

Brian Bear