

**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 OPPOSITION
TO MISSOURI LANDOWNERS ALLIANCE'S MOTION TO STRIKE CERTAIN PRE-
FILED EVIDENCE ON THE BASIS OF SECTION 536.070(11) RSMo**

The admissibility of evidence offered by an expert witness is governed by §490.065, not §536.070 (11) Revised Statutes of Missouri, as this Commission has previously ruled.¹ Under §490.065, MJMEUC's John Grotzinger is an expert qualified to testify by virtue of his knowledge, skill, experience, training or education. Further under §490.065, the schedules attached to Mr. Grotzinger's pre-filed rebuttal testimony are admissible because they are documents either created by him or are of the type reasonably relied upon by experts in his field. Thus, MLA's Motion to Strike two of Mr. Grotzinger's schedules and related portions of his pre-filed rebuttal testimony is not well-grounded and should be denied.

Mr. Grotzinger's pre-filed testimony is admissible under the controlling Missouri law:

Missouri 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."² This statutory requirement for qualified expert witnesses governs administrative

¹ Missouri Landowners Alliance acknowledges, at paragraph 12 of its Motion to Strike, that its similar Motion to Strike filed in the 2014 case was, in all relevant aspects, denied.

² Revised Statutes of Missouri §490.065(1).

cases, such as this matter, as well as civil cases in circuit court.³ Section 490.065.1 “specifically governs the admissibility of expert witness testimony, and it states that a witness may be qualified as an expert by ‘knowledge, skill, experience, training, or education.’”⁴

The MLA does *not* seek, in its Motion to Strike, any ruling from this Commission regarding Mr. Grotzinger’s qualifications to offer expert opinion testimony in this matter.⁵ Rather, MLA has moved to strike only the portions of Mr. Grotzinger’s pre-filed rebuttal testimony in which he refers to the two schedules which are the direct subjects of MLA’s motion to strike.

The two schedules attached to Mr. Grotzinger’s pre-filed testimony are admissible under the controlling Missouri law:

Section 490.065.3, which follows in its entirety for the Commission’s convenience, governs the admissibility of the two schedules to Mr. Grotzinger’s pre-filed testimony which are at the heart of MLA’s motion to strike:

The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.

Experts routinely rely on facts, data and other sources they consider authoritative when forming their opinions on a matter, and the purpose of §490.065.3 “was to bring the legal practice in line with the standard practice exercised by experts in their respective fields.”⁶ Seldom does an expert have the luxury of personally observing the events that later become the

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

⁴ *Klotz v. St. Anthony’s Medical Center*, 311 S.W.3d 752, 761 (Mo. 2010).

⁵ Similarly, there is no dispute that MJMEUC gave MLA early notice, in its response to data request MJM.59, that Mr. Grotzinger would offer expert opinion testimony.”

⁶ *Klotz*, 311 S.W.3d at 764-765.

issues in litigation, and thus typically “...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.”⁷ Because testifying experts routinely rely on facts observed by others and data prepared by others, those facts and data need not be independently admissible nor must the original observer or author be subjected to cross-examination. Instead, Missouri law requires that the facts or data relied upon by the testifying expert (1) “be of a type reasonably relied upon by experts in the field,” and (2) “be otherwise reasonably reliable.”⁸

Courts generally defer to the expert’s assessment of the reliability of facts or data reasonably relied on by that expert and experts in his or her field.⁹ Questions raised by an opponent as to the reliability of the source of the facts or data relied on by the testifying expert affect the weight, not the admissibility, of the expert’s evidence.¹⁰

In forming the opinions set out in his pre-filed rebuttal testimony, Mr. Grotzinger reasonably relied upon the facts and data contained in the Leidos report, which is attached to his testimony as Schedule JG-2 and marked Highly Confidential, and so will be discussed only generally herein. As explained by Mr. Grotzinger in the testimony MLA seeks to strike along with Schedule JG-2, MJMEUC contracted for the Leidos report and thus both MJMEUC and Mr. Grotzinger reasonably relied upon the facts and data contained within the report. As for Schedule JG-6, which MLA also seeks to strike along with Mr. Grotzinger’s related testimony – Mr. Grotzinger himself created Schedule JG-6, relying at least partially on facts and data contained within Schedule JG-2. Mr. Grotzinger, of course, will be available for MLA’s cross-examination at trial.

⁷ *CADCO, Inc. v. Fleetwood Enterprises, Inc.*, 220 S.W.3d 426, 434 (Mo. App. E.D. 2007).

⁸ *Id.* See §490.065.3.

⁹ *CADCO, Inc.*, 220 S.W.3d at 434.

¹⁰ *Doe v. McFarlane*, 207 S.W.3d 52, 62 (Mo. App. E.D. 2006).

In sum, MLA's sole, real objection is to the Highly Confidential Leidos report attached as Schedule JG-2 to Mr. Grotzinger's rebuttal testimony. But, MJMEUC contracted for the Leidos report because it is the type of report reasonably relied upon by experts in the field. Thus, MJMEUC and Mr. Grotzinger reasonably relied upon the facts and data contained within that report.

Conclusion:

Missouri case and statutory law specifically provide for admission of the very type of expert testimony and schedules offered by MJMEUC's Mr. Grotzinger in his pre-filed rebuttal testimony. MLA's motion to strike portions of Mr. Grotzinger's testimony and two schedules, based on an inapplicable statute, is not well-grounded and should be denied. MJMEUC respectfully requests the Commission for a ruling denying MLA's motion to strike Schedule JG-2, Schedule JG-6 and Mr. Grotzinger's pre-filed rebuttal testimony found at Page 3, lines 12 through 17, and at Page 7, line 19 through Page 8, line 6.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Missouri Joint Municipal Electric Utility Commission's Opposition to Missouri Landowners Alliance's Motion to Strike Certain Pre-Filed Evidence on the Basis of Section 536.070(11) RSMo was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 13th day of March, 2017:

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