

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

APPLICATION OF REHEARING OF THE MISSOURI FARM BUREAU

COMES NOW Missouri Farm Bureau (“MFB”), pursuant to RSMo. 386.500 and 4 CSR 240-2.160, and on the grounds set forth below respectfully applies for a rehearing in this matter in light of the Commission’s Report and Order on Remand (the “Report and Order”) issued on March 20, 2019. For the following reasons, MFB contends the Report and Order was unlawful:

- 1. Grainbelt Express Clean Line LLC (“Grainbelt”) is not an “electrical corporation” under Missouri law, and is therefore outside the jurisdiction of the Commission**
 - a. Grainbelt is not offering power to the public indiscriminately and is therefore not an “electrical corporation”**

Per the holdings in *State ex rel. Dancinger v. Public Service Commission*, 205 S.W. 36 (Mo. 1918) and *Palmer v. City of Liberal*, 64 S.W. 265 (Mo. 1933), an entity that distributes electricity, but does not offer electricity to the public, is outside the jurisdiction of the Commission. The Court in *Palmer*, commenting on *Dancinger*, stated:

We held that the sale of surplus electrical energy of a private industrial concern by the owners thereof to a few customers within a limited area does not constitute a public utility business within the jurisdiction of the Public Service Commission, and that the Public Service Commission of this state had no jurisdiction over that company.

The Court went on to hold in *Palmer* that a company that does not deal with the public is outside the Commission’s jurisdiction.

Similarly, in the instant case Grainbelt is a private company that only proposes to distribute power to a few customers in a limited area. It does not propose to sell power to any residential customer or commercial customer. Grainbelt is therefore not under the jurisdiction of the Commission and may not receive a CCN from the Commission, and the Report and Order was unlawful.

b. Grainbelt has no asset that would qualify as an “electric plant”, and therefore is not an “electrical corporation” and is outside the jurisdiction of the Commission

Under Missouri statutes, an electrical corporation is defined under Section 386.020(15)

RSMo., in relevant part, as:

(15) **“Electrical corporation”** includes every corporation, company, association, joint stock company or association, partnership and person...owning, operating, controlling or managing any electric plant...

The term “electric plant” is in turn defined under Section 386.020(14) RSMo. as:

(14) **“Electric plant”** includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power

From these definitions, it is clear from the record that Grainbelt is not an “electrical corporation” under Missouri law. Grainbelt has not built any actual infrastructure, so it has no assets that it is currently “owning”, “operating” or “managing” per Section 386.020(15) RSMo.

Grainbelt's only plausible argument is that it is "controlling" an asset that qualifies as an "electric plant" per Section 386.020(14) RSMo. is that Grainbelt "controls" real estate in the form of 39 easements that Grainbelt has already secured. But Grainbelt's standard easement agreement makes clear that the easement only grants Grainbelt the right to use the easement for the future construction of structures to transmit electric energy. Until Grainbelt does in fact build such structures, it does not have any legal rights to possession or control of such easements. Grainbelt therefore does not "control" any "electric plant" and does not meet the definition of "electrical corporation" under Missouri law.

This definition is in turn important because under Section 393.171 RSMo., no "electrical corporation" may begin construction of an "electric plant" without first obtaining the permission and approval of the Commission. However, if the entity in question is not an "electrical corporation" to begin with, the Commission does not have the jurisdiction to issue a CCN. The Commission therefore does not have jurisdiction to grant Grain Belt a CCN under Section 393.170 RSMo, and the Report and Order was unlawful.

WHEREFORE, Missouri Farm Bureau pursuant to RSMo. 386.500 and 4 CSR 240-2.160, respectfully applies for a rehearing in this matter on the grounds set forth above in light of the Commission's Report and Order.

Respectfully submitted,

HADEN & HADEN LLC



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CERTIFICATE OF SERVICE

I hereby certify the copies of the foregoing have been e-mailed to all parties on the official service list for this case on this 18th of April, 2019.



Brent E. Haden, Mo. Bar No. 54148