

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)

MOTION OF MISSOURI LANDOWNERS ALLIANCE
TO STRIKE “NOTICE REGARDING SUPPLEMENTAL TESTIMONY
FROM CLEAN GRID ALLIANCE and THE WIND COALITION”

Comes now the Missouri Landowners Alliance (MLA) and for the reasons set forth below respectfully asks the Commission to strike the above referenced Notice (“Notice”) filed in this case on November 12, 2018. (EFIS 655). In support of this Motion, the MLA states as follows:

The substance of the Notice consists of two sets of factual allegations by counsel for Clean Grid Alliance and the Wind Coalition: (1) that their witness from the prior phase of this case, Mr. Michael Goggin, has reviewed his earlier testimony and concluded that there are no changes in the facts of that testimony “that would materially change the positions in that testimony”; and (2) accordingly, a detailed list of supposed facts which are favorable to the grant of the CCN, and which were addressed by Mr. Goggin in his earlier testimony, are also still accurate.

It is black letter law that statements of counsel are not evidence.¹ Therefore, the Notice consists merely of an irrelevant and unauthorized attempt to bring certain evidentiary “facts” to the attention of the Commission. And opposing counsel will

¹ See e.g. *State v. Brown*, 337 S.W.3d 12, 21 (Mo. banc 2011), f.n.3 in dissenting opinion.

seemingly have no opportunity to cross-examine anyone regarding the significant factual allegations in the Notice.

Those allegations should have been presented, if at all, in the form of sworn supplemental direct testimony, which was to be filed on or before the date the Notice was filed.² Counsel for Clean Grid Alliance and the Wind Coalition offered no excuse for not filing their allegations in sworn supplemental direct testimony, as other parties have done. And of course the time for filing such testimony (and for submission of data requests with respect thereto) has now past.³

In short, there is absolutely no legitimate reason why the factual allegations which form the heart of the Notice should be allowed to remain as part of the record in this case.

WHEREFORE, the MLA respectfully asks the Commission to strike the Notice filed on November 12, 2018 by Clean Grid Alliance and the Wind Coalition.

Respectfully submitted,

/s/ Paul A. Agathen
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 16th day of November, 2018.

/s/ Paul A. Agathen
Paul A. Agathen

² Order Setting Supplemental Procedural Schedule and other Procedural Requirements, issued October 24, 2018.

³ *Id.*