

**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
OBJECTION TO MLA'S OFFER OF FOUR EXHIBITS INTO THE RECORD OF
EVIDENCE**

Tribunals often consider a lawyer's written and oral arguments to be helpful, and even persuasive, even though such arguments never amount to *evidence* in the record of a case. Thus, the Missouri Landowners Alliance ("MLA") has rightly been afforded some latitude in supporting its briefed arguments with references to select documents that are undeniably unrelated to this case. However, MLA will overstep Missouri law and corrupt this Commission's proceeding if it is permitted to add four such documents into the *Record of Evidence* in this case so that they may also become part of the *Record on Appeal* when the final decision in this case may be appealed.¹ Therefore, pursuant to 4 CSR 240-2.130(17), the members of the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") respectfully object and ask that MLA's request be denied.

¹ See, MLA's July 23, 2017 Notice of Intent to Offer Exhibits. At page 1, MLA states that "this case may ultimately be appealed." And, at page 2 MLA declares that it "believes the reviewing court might well find it helpful to have access to the factual background for the ATXI decision which is available in the four documents which the MLA proposes to offer as exhibits...[but] it is not clear whether the reviewing court could or would consider any materials which were not included in the record of this case as certified to the court by the Commission."

The four documents at issue were created in an unrelated case to which MJMEUC was not a party, and therefore cannot be accepted as post-hearing exhibits in the Record of Evidence in this case.

The law of evidence that governs this Commission's proceedings is found at 4 CSR 240-2.130 and §536.070, Revised Statutes of Missouri. That law of evidence provides MJMEUC, as a party intervenor in this case, with the right to meet and rebut all evidence offered.² Indeed, prior to the March 2017 hearing in this matter, MJMEUC was provided full and fair notice of the evidence MLA would offer at that hearing and MJMEUC availed itself of its right to rebut all such evidence.

On the other hand, MJMEUC was not a party in either EA-2015-0146 or the *Ameren Transmission Co.* appeal.³ Given that the decision in *Ameren Transmission Co.* is now final, there will be no dispute that MJMEUC had no opportunity to rebut any of the documents filed before this Commission or the Western District Court of Appeals in that unrelated case, including the four documents MLA now seeks to make part of the Record of Evidence in this case.

MLA's request to include these four documents in the Record of Evidence in this case violates the law of evidence that governs this case and protects MJMEUC's right to Due Process. To protect the Record of Evidence in this case from corruption (and the Record on Appeal if this case is appealed), MJMEUC must and does object to MLA's request to supplement these records with such extraneous matter.⁴ MLA's request must be denied.

² §536.070(2), Revised Statutes of Missouri.

³ *In re Ameren Transmission Co. v. PSC of Mo.*, No. WD 79883, 2017 Mo. App. LEXIS 244* (Mar. 28, 2017), *applications for transfer denied*, No. SC96427, 2017 Mo. LEXIS 266* (June 27, 2017).

⁴ *Pretti v. Herre*, 403 S.W.2d 568, 569 (Mo. 1966) (Appellate court's review is limited to the Record on Appeal that cannot "be supplemented by extraneous matter not found in the transcript nor conceded by adverse counsel").

Document No. 1 – This Commission is well aware of its EA-2015-0146 Report and Order, and the *Ameren Transmission Co.* Court had this Report and Order in its Record on Appeal, so there is no need to corrupt the Record of Evidence in this case with this document.

This Commission already possesses and is fully aware of its own Report and Order issued in EA-2015-0146. Further, the *Ameren Transmission Co.* Court must also have had a copy of this Commission’s EA-2015-0146 Report and Order, because Rule 81.12(b)(2) of the Missouri Rules of Civil Procedure required it to be included in the Legal File portion of the Record on Appeal filed in that case.

MJMEUC therefore objects to the inclusion in the Record of Evidence in this case of this Commission’s EA-2015-0146 Report and Order, and asks that MLA’s request be denied.

Document No. 2 - This Commission has access to ATXI’s EA-2015-0146 Initial Post-Hearing Brief, but it is inappropriate for inclusion in the Record of Evidence in this case and it is legally barred from inclusion in any Record on Appeal.

Again, there will be no dispute that MJMEUC was not a party to EA-2015-0146 and therefore had no opportunity to rebut any evidence or briefed arguments in that case. Thus, accepting this brief into the Record of Evidence in this case would violate MJMEUC’s rights to Due Process as protected by 4 CSR 240-2.130 and §536.070, Revised Statutes of Missouri. Further, this brief will *not* be accepted into any Record on Appeal, because Rule 81.12(b)(3) of the Missouri Rules of Civil Procedure excludes “briefs” from the Legal File portion of the Record on Appeal.

MJMEUC therefore objects to the inclusion in the Record of Evidence in this case of this ATXI brief from the EA-2015-0146 matter, and asks that MLA’s request be denied.

Documents No. 3 and No. 4– ATXI’s brief and the PSC’s brief filed in the *Ameren Transmission Co.* case are irrelevant to this Commission’s deliberations in this case, and are legally barred from inclusion in any Record on Appeal.

The final order rendered by the Western District Court of Appeals in *Ameren Transmission Co.* does not provide binding precedent for this Commission in this case, and MJMEUC incorporates here its position more fully set forth in its July 18, 2017 Supplemental Brief. Given that the *Ameren Transmission Co.* Order is not binding here, it follows that briefing filed by the parties to that appeal is irrelevant to this Commission. Further, because MJMEUC was not a party to the *Ameren Transmission Co.* case, it had no opportunity there to rebut that briefing. MJMEUC’s Due Process right to rebut all evidence taken in this case will be violated by the inclusion of any *Ameren Transmission Co.* brief in the Record of Evidence of this case. Finally, neither of these briefs will be accepted into any Record on Appeal, because Rule 81.12(b)(3) of the Missouri Rules of Civil Procedure excludes “briefs” from the Legal File portion of the Record on Appeal.

MJMEUC therefore objects to the inclusion in the Record of Evidence in this case of both of these *Ameren Transmission Co.* briefs, and asks that MLA’s request be denied.

Conclusion

MJMEUC respectfully objects to the inclusion in the Record of Evidence in this case of these four documents, and asks that MLA’s request be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Missouri Joint Municipal Electric Utility Commission's Objection to MLA's Offer of Four Exhibits Into the Record of Evidence was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 28th day of July, 2017:

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