

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)

OPPOSITION OF THE MISSOURI LANDOWNERS ALLIANCE TO
MOTION OF GRAIN BELT EXPRESS TO SUPPLEMENT THE RECORD

Comes now the Missouri Landowners Alliance (MLA), pursuant to Commission Rule 4 CSR 240-2.080(13) , and respectfully states the following in Opposition to the Motion of Grain Belt Express to Supplement the Record, filed on May 2, 2014.

Grain Belt is hedging its bets here, by formally offering to supplement the record with a portion of the material which the MLA has already moved to strike from Grain Belt’s Reply Brief.

In support of its Motion, Grain Belt relies primarily on Commission Rule 4 CSR 240-2.130(16).¹ This subsection contains two sentences, the first of which states that the presiding officer “may require the production of further evidence upon any issue.” The use of the word “require” there clearly shows that this provision does not authorize one of the parties on its own behalf to supplement the record. The obvious intent is to allow the Commission on its own initiative to require that additional evidence be adduced.

The second sentence of subsection (16) is likewise inapplicable here. It states that the presiding officer may authorize the filing of specific evidence within a fixed time after the case is submitted, reserving exhibit numbers and setting other conditions as may

¹ See Grain Belt’s Motion, p. 2 par. 4.

be appropriate. The MLA submits that the obvious intent here was to allow for the late filing of exhibits which had already been discussed and authorized during the course of the hearings.

A perfect example is Grain Belt's late-filed Exhibit 139. As Grain Belt stated when filing that document:

At that time [during the hearing on March 22, 2017] Judge Bushmann stated that Grain Belt Express would be permitted to supplement the record with the complete version of the report, which is here marked as Exhibit 139, the next number in the sequence of the Company's exhibits.²

In contrast, Exhibit 140, now being offered by Grain Belt, was not "specific evidence" which was discussed or offered at the hearings. Thus like the first sentence of subsection (16), this second sentence clearly does not contemplate the tactic being used here by Grain Belt to supplement the record from hearings which ended well over a month ago.

Grain Belt also relies on Section 386.410.1 RSMo, which states that the Commission is not bound by the technical rules of evidence. However, it has long been the law in Missouri that the statute in question is not applicable to the type of evidence at issue here. The controlling distinction was made clear in *State ex rel. De Weese*, 221 S.W.2d 206, 209 (Mo 1949) where the Missouri Supreme Court ruled that an administrative agency improperly relied on testimony which, among other defects, was based on hearsay evidence. As the Court stated:

The fact that technical rules of evidence do not control has been considered to permit of leading questions and other informalities, but not to abrogate the fundamental rules of evidence. (citations omitted).

² Notice of Submission of Complete Version of U.S. Energy Information Administration Report by Grain Belt Express Clean Line LLC, March 29, 2017. EFIS No. 361.

The MLA respectfully submits that the right of a party to cross-examine and to challenge evidence offered by an opposing party are indeed “fundamental rules of evidence.”

Grain Belt also asserts that the information in question is valuable, and will be of assistance to the Commission. That being the case, and given that Grain Belt has the burden of proving every aspect of its case here, they could and should have offered the Exhibit during the regular course of the hearings. In retrospect, other parties would no doubt like the opportunity to supplement the record with additional evidence as well.

The Commission’s own rules make no provision for the receipt at this late date of evidence which Grain Belt was perfectly capable of producing at the hearings. Nor has Grain Belt cited a single instance where the Commission has condoned what Grain Belt is seeking to do here. Its Motion should therefore be denied.

If the Commission does grant Grain Belt’s Motion, then the MLA respectfully asks that the hearings be briefly reconvened in order for the MLA to cross-examine Mr. Berry on the material submitted as Exhibit 140. The Commission should not allow those self-serving statements to become a part of the record without granting opposing parties the opportunity to challenge what was said.

In addition, if Grain Belt’s Motion is granted, the MLA also requests the opportunity to submit additional material into the record for the Commission’s consideration, and to file a supplemental brief regarding the newly filed material.

Relying on the material in Exhibit 140 without providing the other parties the opportunity to cross-examine and to offer additional evidence on their own would deprive the opposing parties of their right to due process, as guaranteed by Amendments V and

XIV to the United States Constitution, and Article 1 Section 10 of the Missouri Constitution.

Wherefore, the MLA respectfully asks the Commission to deny the Motion of Grain Belt to Supplement the Record. If the Commission does grant said Motion, then the MLA respectfully asks that the proceedings be reopened in order to allow the parties the opportunity to (1) cross-examine Mr. Berry regarding the contents of Gain Belt's proposed Exhibit 140; (2) to offer additional evidence for the Commission's consideration; and (3) to file supplemental briefs regarding any such additional evidence.

Respectfully submitted,

Missouri Landowners Alliance

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served upon the parties to this case by electronic mail this 5th day of May, 2017.

/s/ Paul A. Agathen

Paul A. Agathen