

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 “AFFIDAVIT OF MICHAEL GOGGIN in support of NOTICE  
REGARDING SUPPLEMENTAL TESTIMONY on behalf of 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 Affidavit of Michael Goggin (“affidavit”), filed on November 16, 2018.<sup>1</sup> This affidavit and the accompanying materials apparently were submitted in response to the MLA’s Motion filed earlier that day, seeking to strike the “Notice” filed by Clean Grid Alliance and the Wind Coalition on November 12, 2018. In support of this Motion, the MLA states as follows:

With all due respect to counsel for the Clean Grid Alliance and the Wind Coalition, it is not clear what they are attempting to accomplish with the filing of Mr. Goggin’s affidavit which accompanied their Motion of November 16. In both their November 12 and November 16 filings, those two parties confirm that they will not be filing any supplemental testimony in the remand phase of this case. (See Motion, p. 1 par. 2). So if the affidavit from Mr. Goggin is not to be considered testimony, then it serves no possible purpose, except as a source of factual allegations which those two

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<sup>1</sup> The MLA is not objecting here to the second affidavit from Mr. Goggin filed with that same Motion, i.e., the “Affidavit of Michael Goggin in Support of Motion for Leave to File Out of Time and Instantly.”

parties, as well as Grain Belt and its other supporters, could later rely upon in briefs or elsewhere in these proceedings.

The MLA submits that allowing Mr. Goggin's affidavit to remain as part of the record, for any purpose whatsoever, is improper for a number of reasons:

No party asked at the Procedural Conference of October 11, 2018 for leave to file an affidavit in lieu of testimony for the purpose of submitting evidence in this case.

The Commission's Order of October 24, 2018 made no provision for submitting evidence by means of an affidavit, nor any provision with respect to discovery regarding such an affidavit.

The Commission's rules addressing "evidence," 4 CSR 240-2.130, make no provision for submitting evidence in the form of an affidavit, instead of or in addition to the prepared, pre-filed written testimony described therein.

Mention is made in Section 536.070(12) of submitting an affidavit in a contested case, but allows any party to object to such submission on the ground that it is in the form of an affidavit. The MLA does hereby raise that objection to the affidavit from Mr. Goggin.

Allowing the affidavit in question to remain as part of the record will open the door for any and all other parties here to simply by-pass the schedule for the filing of additional supplemental testimony in this case, and file affidavits from perhaps dozens of other individuals who will not be subject to cross-examination on their alleged factual assertions.

It also opens the door to utilizing this same procedure in lieu of pre-filed testimony in all other forthcoming cases before the Commission.

Finally, allowing the affidavit in question to remain a part of the record will only cause confusion concerning its permissible use.

WHEREFORE, the MLA respectfully asks the Commission to strike the affidavit from Mr. Goggin referred to in the heading of this Motion (as well as the “Notice” filed on November 12, 2018 by Clean Grid Alliance and the Wind Coalition, as addressed in the MLA’s response thereto).

Respectfully submitted,

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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 19th day of November, 2018.

/s/ Paul A. Agathen  
Paul A. Agathen