

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 the Eastern Missouri Landowners Alliance DBA Show Me
Concerned Landowners to Offer an Additional Exhibit for the Record in This
Case, and to Submit Additional Argument Regarding Said Exhibit

Come now the Eastern Missouri Landowners Alliance DBA Show Me Concerned Landowners (“Show Me”), pursuant to Commission Rule 4 CSR 240-2.015 (“Waiver of Rules”) and respectfully requests that the Commission receive the affidavit attached hereto as Exhibit 1 into evidence, and permit Show Me to submit brief argument (set forth below) regarding that Exhibit. In support of this Motion, Show Me states as follows:

1. In its initial brief on remand, Grain Belt asserted that it had an option to purchase land in Ralls County for its proposed converter station. (Grain Belt Initial Brief on Remand, p. 9-10; EFIS 735). Grain Belt then relied upon that purchase option to support its legal argument that it meets the statutory definition of an “electrical corporation.” (*Id.* p. 10-13).

2. Show Me does not dispute the fact that Grain Belt had an option to purchase the land for the Ralls County converter station when it filed its briefs on remand. However, as demonstrated by the affidavit attached hereto as Exhibit 1, that option

expired on January 29, 2019.

3. The affidavit at Exhibit 1 is corroborated by the Memorandum of Option Agreement, which was attached as Schedule MOL-14 to the Surrebuttal Testimony of Mr. Lawlor in the 2014 case, No. EA-2014-0207, EFIS 241. Grain Belt relies on this document in its initial brief on remand in this case, p. 9 at f.n. 5 (although Grain Belt mistakenly refers to the Memorandum of Option Agreement cited there as the Option Agreement itself). Pages 1 and 2 of Mr. Lawlor's Schedule MOL-14 are attached hereto as Exhibit 2.

4. Based on Exhibits 1 and 2, Grain Belt will no doubt concede that it no longer has an option to purchase the land for its Ralls County Converter station. And there is no evidence that Grain Belt has any other option to purchase real property in Missouri.

5. As discussed in the "Argument" section below, this new development greatly weakens Grain Belt's argument that it owns the necessary assets to qualify as an "electrical corporation" under Section 386.020(15) RSMo. Given that Grain Belt no longer holds that purchase option, Show Me contends that Grain Belt is not now an "electrical corporation" under Missouri Law. Accordingly, the affidavit at Exhibit 1 is relevant to the issue of whether Grain Belt is or is not an "electrical corporation" under Missouri law. The answer to this question would in turn determine whether the Commission has the jurisdiction to approve the Application for the CCN in this case. Accordingly, the affidavit at Exhibit 1 is relevant to a critical issue in this case, and should be received in evidence.

6. The Commission has accepted additional evidence after the close of the hearings and briefing earlier in these Grain Belt proceedings. In an Order of February 11,

2015 in Case No. EA-2014-0207, it directed Grain Belt to provide additional evidence almost two months after briefing was completed. (EFIS 496).

7. Good cause exists for granting this Motion, in that without the additional information contained herein the Commission would have been left in the dark regarding a significant change of fact which could well determine a deciding issue in this case. In fact, it would be a disservice to the Commission not to bring this matter to its attention.

Argument on Issue of Whether Grain Belt is an Electrical Corporation

8. As noted by Grain Belt, pursuant to Section 386.020(15), an electrical corporation “includes every corporation ... owning, operating, controlling or managing any electric plant” And under subdivision (14) of that statute, 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 ... transmission, distribution, sale or furnishing of electricity” (Initial Brief on Remand, p. 10).

9. Aside from the option to purchase the land for the converter station (which is no longer an issue), Grain Belt argued in its Initial Brief on Remand that it owns or has an interest in the following, each of which it argues constitutes “electric plant”:
easements for property on the proposed right-of-way; cash; and the assents from two counties to build the line over county roads pursuant to Section 229.100. (Initial Brief on Remand, p. 10-11). However, none of these items constitute “electric plant” as that term is used in the statute.

10. Easements for the right-of-way. Grain Belt’s argument here is that an easement constitutes “an interest in real estate.” (Brief, p. 10). While that may be true, the statute requires more than a mere “interest” in the property. To qualify as an

electrical corporation, the entity must actually own, operate, control or manage the property in question. (Sec. 386.020(15)). A mere easement does not give Grain Belt any of these necessary ownership attributes. Hence a mere easement cannot qualify Grain Belt as an electrical corporation.

11. Cash. Grain Belt also argues in one brief paragraph that it qualifies as an electrical corporation because it owns money. (Initial Brief on Remand, p. 11). The money, they claim, constitutes “personal property.”

Grain Belt cites three cases in support of this proposition, but none deal even remotely with the statutes regulating utilities. They simply say, for example, that the tort of conversion will lie for the taking of another’s personal property. *Fleischmann v. Mercantile Trust Co.*, 617 S.W.2d 73 (Mo banc 1981). Yet Grain Belt cites this case for the proposition that its money “is also considered personal property and ‘electric plant’.”

Show Me submits that a fair reading of the statute in question would include as electric plant only those items which are generally considered components of the normal electrical system. If that were not the case, the legislature could simply have said that electric plant includes all property to be used in the generation, transmission or distribution of electricity.

Under Grain Belt’s reading of the statute, anyone with \$10.00 in a checking account and a carefully crafted Application could qualify as an “electrical corporation”, thereby necessitating hearings on whether it deserves a CCN under the five Tartan criteria. That certainly could not be what the General Assembly intended.

In any event, Grain Belt has pointed to no evidence that it (as opposed to Clean Line) actually owns any cash or money. (See Initial Brief on Remand, p. 11).

12. County Commission assents under Section 229.100. Finally, Grain Belt argues that the two county consents it has secured constitute “franchises”, and that franchises are considered a form of personal property. (Initial Brief on Remand, p. 9, 11-12). Specifically, Grain Belt asserted as follows: “Finally, the Company presently holds county road-crossing assents (also referred to as franchises) that were issued by Buchanan and Carroll Counties).” (*Id.* p. 9).

This latter statement and indeed Grain Belt’s entire argument on this point is a complete reversal of the position it has consistently maintained regarding the nature and character of the county consents granted under Section 229.100.

In one of the cases in circuit court where the MLA sought to invalidate the county consent given earlier to Grain Belt, the MLA alleged in its Petition as follows:

“Permission granted by a County Commission pursuant to § 229.100 to use public roads for construction and maintenance of utility facilities is sometimes referred to as a ‘franchise’”

In stark contrast to the sentence quoted above from its recent Brief on Remand, Grain Belt’s Answer to the MLA’s assertion in the circuit court case was as follows:

Grain Belt Express denies that “franchise” is an accurate or proper description for the authority that a county may grant under Section 229.100 which, instead, contains the term “assent” and relates only to the crossing of county roads or highways by “power wires” and other infrastructure.¹

Grain Belt made the identical claim in a second circuit court case, this time in Monroe County.²

¹ First Amended Answer of Grain Belt in Case No. 14CL-CV00222 in the Circuit Court of Caldwell County. See paragraph 14 of Exhibit 3 hereto.

² Paragraph 14 of Grain Belt’s First Amended Answer in Case No. 14MN-CV00164 in the Circuit Court of Monroe County. See Exhibit 4 hereto.

Grain Belt’s new-found position regarding the nature of a franchise is also directly contrary to the arguments it made on appeal of the Commission’s Report and Order of August 16, 2017. The MLA argued (unsuccessfully) in the Court of Appeals that the county consents granted under Section 229.100 amounted to franchises.³

In response, Grain Belt disputed that claim.⁴ Specifically, it stated that the MLA’s position on this matter “is at odds with historical understanding and application of the term ‘franchise’ in the CCN Statute, which is understood to be PSC (not local) permission to provide utility service to a specific area.”⁵

On transfer of the Eastern District’s decision to the state Supreme Court, the MLA pursued its argument that county consents under Section 229.100 constituted franchises, and thus under Section 393.170.2 those consents must be obtained before the Commission may issue a CCN.⁶ Obviously the Supreme Court did not accept the MLA’s position on that issue, or it would necessarily have ruled in its favor.⁷ And by so ruling, the Court also rejected Grain Belt’s argument on this remand that a county consent under Section 229.100 amounts to a “franchise”.

In summary, the evidence shows that Grain Belt does not presently own, operate, control or manage anything coming within the definition of “electric plant”.

Accordingly, Grain Belt does not constitute an electrical corporation under the CCN statute. Therefore, the Commission lacks the statutory authority and thus the jurisdiction to grant Grain Belt the CCN it is seeking in this case.

³ See Point II of the MLA’s brief in the Eastern District of the Court of Appeals, at Exhibit 5 hereto.

⁴ See Grain Belt’s Reply Brief in the Eastern District, pp. 7-8, included as Exhibit 6 hereto.

⁵ *Id.* p. 7-8.

⁶ See Point I of the MLA’s brief to the Supreme Court in case No. SC96993, shown at Exhibit

⁷ *Grain Belt Express Clean Line LLC v. Public Service Commission*, 555 S.W.3d 469 (2018).

Wherefore, Show Me respectfully requests that the Commission receive the affidavit attached hereto as Exhibit 1 into evidence, and permit Show Me to submit the argument set forth in paragraphs 8 - 12 above regarding the implications of that Exhibit.

Respectfully submitted,

/s/ Paul A. Agathen
Attorney for Show Me Concerned Landowners
485 Oak Field Ct., Washington, MO 63090
(636)980-6403
Paa0408@aol.com
MO Bar No. 24756

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 15th day of February, 2019.

/s/ Paul A. Agathen
Paul A. Agathen

EXHIBIT 1

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)

Affidavit of James Moomaw

James Moomaw, being first duly sworn, on his oath states as follows:

1. I am an individual over the age of eighteen. I have personal knowledge of the facts set forth below, and if called to testify as a witness I would competently do so.
2. My wife Virginia Moomaw and I jointly own a parcel of land situated in Ralls County, Missouri, consisting of approximately forty-seven acres (the "property").
3. On January 21, 2014, my wife and I signed a document titled "Missouri Option Agreement", in which we granted to Grain Belt Express Clean Line LLC the exclusive right and option for a period of five years to purchase the property for a specified sum.
4. I understood from statements made by representatives of Grain Belt at the time that the property was to be used as part of a proposed transmission line across northern Missouri.

5. During the days leading up to the expiration of the option (on January 29, 2019) I was approached several times by representatives of Grain Belt, who asked that my wife and I sign an agreement to extend the purchase option. We declined to do so, and it is my understanding that the option on the property has now expired.

Signed this 14 day of February, 2019.

James Moomaw
James Moomaw

Subscribed and sworn to before me this 14th day of February, 2019.

Hali D. Kelly
Notary Public

My commission expires: April 05, 2022

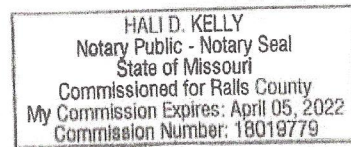


EXHIBIT 2



MO-RL-037,300
MO-RL-038,300



MEMORANDUM OF OPTION

Recorder's Cover Sheet

Preparer Information: (Name, address and phone number)

Grain Belt Express Clean Line LLC
Clean Line Energy Partners LLC
Attn: Cary Kottler & Deann Lanz
1001 McKinney Street, Suite 700
Houston, Texas 77002
Phone 832-319-6320

Return Document To: (Name and complete address)

Grain Belt Express Clean Line LLC
c/o Contract Land Staff
PO Box 4144
Waterloo, Iowa 50704

Grantors:

James Michael Moomaw and Virginia Doris Moomaw

Grantee:

Grain Belt Express Clean Line LLC

Date of Agreement: February 7, 2014

Legal Description: See Page 3

MEMORANDUM OF OPTION

THIS DOCUMENT PREPARED BY, AND
AFTER RECORDING RETURN TO:

Grain Belt Express Clean Line LLC
c/o Clean Line Energy Partners LLC
1001 McKinney, Suite 700
Houston, Texas 77002
Attn: Cary Kottler & Deann Lanz

(This space reserved for recording information)

MEMORANDUM OF OPTION AGREEMENT

STATE OF MISSOURI

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF RALLS

EXECUTED as of February 7 2014 (the "Effective Date"). By that certain Option Agreement dated January 29, 2014 (the "Option Agreement"), by and among James Michael Moomaw and Virginia Doris Moomaw, husband and wife, as tenants by the entirety (collectively, "Grantor" or "Owner") and Grain Belt Express Clean Line LLC, an Indiana limited liability company ("Grantee" or "Purchaser"), Owner has granted to Purchaser an option to purchase fee simple title to that certain tract or tracts of real property consisting of approximately forty-seven (47) acres, situated in Ralls County, Missouri, as more particularly described on Exhibit A and Exhibit A-1 attached hereto and incorporated herein, together with (1) all buildings, structures, fixtures and other improvements located, if any, on the Land; and (2) all other appurtenances pertaining to the Land, including, without limitation, all development rights, entitlements, water rights, claims, strips and gores, easements benefiting the Land, and rights in and to adjoining roadways. The option period is for five (5) years from the Effective Date.

The purpose of this memorandum is to give notice of the existence of Purchaser's option rights granted in the Option Agreement, to which Option Agreement reference is made for a full description of the terms and conditions thereof. In the event any of the terms and provisions of this memorandum conflict with the terms and provisions of the Option Agreement, the terms and provisions of the Option Agreement shall control.

This Memorandum of Option Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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EXHIBIT 3

IN THE CIRCUIT COURT OF CALDWELL COUNTY, MISSOURI

MISSOURI LANDOWNERS ALLIANCE and)
)
 KENT TEMPLETON,)
)
 Plaintiffs,)
)
 v.)
)
 GRAIN BELT EXPRESS CLEAN LINE LLC,)
)
 CALDWELL COUNTY COMMISSION,)
)
 C.R. MOTSINGER, COUNTY)
 COMMISSIONER,)
)
 DONNIE COX, COUNTY COMMISSIONER,)
)
 GERALD McBRAYER, COUNTY)
 COMMISSIONER, and)
)
 MISSOURI PUBLIC SERVICE COMMISSION,)
)
 Defendants.)

FILED
 JAN 16 2015

CALDWELL COUNTY CLERK

Case No. 14CL-CV00222

**FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES
OF GRAIN BELT EXPRESS CLEAN LINE LLC**

Defendant Grain Belt Express Clean Line LLC (“Grain Belt Express”) states the following for its Amended Answer and Affirmative Defenses. Consistent with Missouri Rule of Civil Procedure 55.33(a), consent to the filing of this amended pleading has been given by counsel for Plaintiffs. Each allegation is denied unless specifically admitted herein.

Parties

1. Plaintiff Missouri Landowners Alliance (Alliance) is a Missouri nonprofit corporation which was organized in March, 2014 for the purpose of opposing the construction of a high-voltage, direct-current (HVDC) electric transmission line which defendant Grain Belt is proposing to build across northern Missouri. As of the date of this filing the Alliance has more than 775 members, virtually all of whom oppose the transmission line, and the great majority of

11. In furtherance of its proposal to build the transmission line, in 2012 Grain Belt sought permission pursuant to § 229.100 from the County Commission in each of the Missouri counties which at that time might be traversed by the line (including Caldwell County) for authority to construct its transmission facilities on and across the public roads of the county in question.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 11.

12. At a meeting of the Caldwell County Commission on September 5, 2012, the County Commission issued the document attached hereto as Exhibit 1, which inter alia purports to grant Grain Belt permission to use the public roads of Caldwell County for construction of its proposed transmission line.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 12.

13. Grain Belt is relying on the document shown at Exhibit 1 hereto as its authorization from the Caldwell County Commission to build the proposed transmission line on the public roads in that county.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 13.

14. Permission granted by a County Commission pursuant to § 229.100 to use public roads for construction and maintenance of utility facilities is sometimes referred to as a "franchise", which term is used herein to describe such permission.

RESPONSE: Grain Belt Express denies that "franchise" is an accurate or proper description for the authority that a county may grant under Section 229.100 which, instead, contains the term "assent" and relates only to the crossing of county roads or highways by "power wires" and other infrastructure. Grain Belt Express denies the remaining allegations in Paragraph 14.

EXHIBIT 4

IN THE CIRCUIT COURT OF MONROE COUNTY, MISSOURI

MISSOURI LANDOWNERS ALLIANCE and)
)
 MARILYN O'BANNON,)
)
 Plaintiffs,)
)
 v.)
)
 GRAIN BELT EXPRESS CLEAN LINE LLC,)
)
 MONROE COUNTY COMMISSION,)
)
 MIKE MINOR, COUNTY)
 COMMISSIONER,)
)
 MIKE WHELAN, COUNTY COMMISSIONER,)
)
 GLENN E. TURNER, COUNTY)
 COMMISSIONER, and)
)
 MISSOURI PUBLIC SERVICE COMMISSION,)
)
 Defendants.)

FILED

JAN 16 2015

HEATHER D. WHEELER
CIRCUIT CLERK
MONROE COUNTY, MO

Case No. 14MN-CV00164

**FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES
OF GRAIN BELT EXPRESS CLEAN LINE LLC**

Defendant Grain Belt Express Clean Line LLC ("Grain Belt Express") states the following for its Amended Answer and Affirmative Defenses. Consistent with Missouri Rule of Civil Procedure 55.33(a), consent to the filing of this amended pleading has been given by counsel for Plaintiffs. Each allegation is denied unless specifically admitted herein.

Parties

1. Plaintiff Missouri Landowners Alliance (Alliance) is a Missouri nonprofit corporation which was organized in March, 2014 for the purpose of opposing the construction of a high-voltage, direct-current (HVDC) electric transmission line which defendant Grain Belt is proposing to build across northern Missouri. As of the date of this filing the Alliance has 777 members, virtually all of whom oppose the transmission line, and the great majority of whom

counties which at that time might be traversed by the line (including Monroe County) for authority to construct its transmission facilities on and across the public roads of the county in question.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 11.

12. At a meeting of the Monroe County Commission on July 30, 2012, the County Commission issued the document attached hereto as Exhibit 1, which *inter alia* purports to grant Grain Belt permission to use the public roads of Monroe County for construction of its proposed transmission line.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 12.

13. Grain Belt is relying on the document shown at Exhibit 1 hereto as its authorization from the Monroe County Commission to build the proposed transmission line on the public roads in that county.

RESPONSE: Grain Belt Express admits the allegations in Paragraph 13.

14. Permission granted by a County Commission pursuant to § 229.100 to use public roads for construction and maintenance of utility facilities is sometimes referred to as a "franchise," which term is used herein to describe such permission.

RESPONSE: Grain Belt Express denies that "franchise" is an accurate or proper description for the authority that a county may grant under Section 229.100 which, instead, contains the term "assent" and relates only to the crossing of county roads or highways by "power wires" and other infrastructure.

15. Attached hereto as Exhibit 2 is a copy of the Notice of the agenda issued by the Monroe County Commission for its meeting on July 30, 2012 at which said Commission purported to issue the franchise to Grain Belt for use of the public roads in Monroe County.

EXHIBIT 5

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

No. ED105932

Grain Belt Express Clean Line, LLC

Appellant,

v.

Public Service Commission of the State of Missouri,

Respondent.

Appeal from the Public Service Commission of the State of Missouri
Case No. EA-2016-0358

**BRIEF OF INTERVENOR MISSOURI LANDOWNERS ALLIANCE
IN RESPONSE TO OPENING BRIEF OF APPELLANT GRAIN
BELT EXPRESS CLEAN LINE, LLC**

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Attorney for Missouri
Landowners Alliance

addressed the primary issues being raised here by Grain Belt, once again citing many of the same cases which Grain Belt relies on in this case. (See Application for Transfer from the PSC, pp. 3-11 and Application for Transfer from ATXI, pp. 4-11). Or as Grain Belt says, the PSC “properly reminded the Supreme Court of the important distinction between a Section 393.170.1 line certificate to construct a plant or a transmission line, and a Section 393.170.2 certificate to provide service to a geographic area.” (LF Vol. XIV, p. 2424).

Nevertheless, on June 27, 2017, the Supreme Court denied the Applications for Transfer. This despite Grain Belt’s prediction that rehearing at the Western District or transfer to the Supreme Court was likely, due to the Western District’s “clear failure” to grasp the distinction between subsections 1 and 2 of § 393.170. (LF Vol. XII, p. 1649, par. 8).

For the foregoing reasons, the ATXI decision from the Western District is directly on point here, and thus the PSC properly viewed that decision as binding precedent in the case below.

II THE COUNTY COMMISSION CONSENTS ALLOWING A UTILITY TO USE PUBLIC RIGHTS OF WAY PURSUANT TO § 229.100 CONSTITUTE “FRANCHISES”, AND THEREFORE UNDER THE EXPRESS TERMS OF § 393.170.2 THOSE FRANCHISES MUST BE OBTAINED BEFORE THE PSC MAY

EXHIBIT 6

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

No. ED105932

GRAIN BELT EXPRESS CLEAN LINE, LLC and MISSOURI JOINT
MUNICIPAL ELECTRIC UTILITY COMMISSION,

Appellants,

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,

Respondent.

Appeal from the Public Service Commission of the State of Missouri

File No. EA-2016-0358

REPLY BRIEF OF APPELLANT GRAIN BELT EXPRESS CLEAN LINE

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CLEAN LINE ENERGY PARTNERS LLC

Cary J. Kottler
Erin Szalkowski
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Telephone: (832) 319-6320
Facsimile: (832) 319-6311

The Court should reverse the PSC's tortured reliance on ATXI and correctly interpret the PSC's authority to issue a Line CCN under subsection 1 of the CCN Statute consistent with the PSC's prior precedent and intent of the General Assembly.

II. MLA's attempted defense of ATXI reinforces why it should not be extended to this case.

Even though ATXI omits any reference to subsection 1 of the CCN Statute or even the distinction more broadly between Line CCNs under subsection 1 and Area CCNs under subsection 2, MLA attempts to defend why that court's reasoning (which even the PSC does not defend) should be applied to this case in which Grain Belt Express specifically applied for a Line CCN under subsection 1. MLA's position only highlights the reality that extending ATXI to this case would elevate limited local authority above the PSC's state-wide regulatory function contrary to the General Assembly's intent.

MLA claims, for the first time, that the term "franchise" in subsection 2 of the CCN Statute encompasses all governmental permissions required in the construction of a transmission line. According to MLA, the requirements of subsection 2 (including obtaining "consent of the proper municipal authorities") apply any time a CCN would allow a utility to use public roads or right of ways – or engage in any other construction activity – in a manner not available to the general public. MLA Resp. 22, 27-28. This argument fails on its face for the reasons set forth in the Joint Municipalities' brief. See MJMUEC Reply 5.

Even ATXI did not embrace MLA's position. It is at odds with historical understanding and application of the term "franchise" in the CCN Statute, which is

understood to be PSC (not local) permission to provide utility service to a specific area. See In re Union Elec. Co. of Missouri, P.S.C. Case No. 12,080, 1951 WL 92056, at *1 (Mo. P.S.C. Mar. 12, 1951) (explaining a franchise grants a utility the right to serve a specific area); State ex rel. Webb Tri-State Gas Co. v. Pub. Serv. Comm'n, 452 S.W.2d 586, 588 (Mo. App. 1970) (franchise ordinances would allow a utility “to serve the entire area shown”). Indeed, the PSC admits, “The second subsection of Section 393.170 primarily addresses certificates for the provision of retail service.” PSC Resp. 18. It is also contrary to the cases and legislative history discussed next in Section III regarding the clear statutory distinction between Line CCNs in subsection 1 and Area CCNs in subsection 2.

MLA’s flawed interpretation of “franchise” is also not limited to just county road crossing assents under the County Road Provision. MLA attempts to define “franchise” under the CCN Statute as all permissions required of various governmental bodies. MLA’s position would require a utility to obtain every government permission necessary to build a transmission line from beginning to end before the PSC has jurisdiction to perform its statutory function of determining whether the project is in the public interest of the state.

At best, this approach would be grossly inefficient and invite waste of administrative and judicial resources. The PSC’s jurisdiction would be subjugated to not only county road crossing assents, but any of the innumerable permissions required from local authorities in constructing an electrical transmission line, such as local road and bridge permits, transportation plans, township road use agreements, and zoning and levee

EXHIBIT 7

IN THE SUPREME COURT OF MISSOURI

No. SC96993

Grain Belt Express Clean Line, LLC, et al.,

Appellants,

v.

Public Service Commission of the State of Missouri,

Respondent.

Appeal from the Public Service Commission of the State of Missouri
Case No. EA-2016-0358

**SUBSTITUTE BRIEF OF INTERVENOR MISSOURI
LANDOWNERS ALLIANCE IN SUPPORT OF RESPONDENT PSC
AND IN RESPONSE TO SUBSTITUTE BRIEF OF APPELLANT
GRAIN BELT EXPRESS CLEAN LINE, LLC**

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Attorney for Missouri
Landowners Alliance

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STATEMENT OF FACTS1

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I THE COUNTY COMMISSION CONSENTS ALLOWING A UTILITY TO USE PUBLIC RIGHT OF WAYS PURSUANT TO § 229.100 CONSTITUTE “FRANCHISES”, AND THEREFORE UNDER THE EXPRESS TERMS OF § 393.170.2 THOSE FRANCHISES MUST BE OBTAINED BY THE UTILITY BEFORE THE PUBLIC SERVICE COMMISSION (PSC) MAY GRANT IT A CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN). (Additional argument not directly addressed by Grain Belt; included pursuant to Rule 84.04(f), at Appendix A1).3

II THE PSC DID NOT ERR IN RELYING UPON THE “ATXI” DECISION FROM THE WESTERN DISTRICT BECAUSE THE ATXI CASE IS DIRECTLY ON POINT HERE, WHEREAS THE STATUTORY LANGUAGE AND THE CASE LAW RELIED ON BY GRAIN BELT DO NOT SUPPORT THE ARGUMENT THAT § 393.170.2 DOES NOT APPLY TO APPLICATIONS FOR A SINGLE TRANSMISSION LINE. (Responds to Grain Belt’s Point I) 18