

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 )

Notice of Intent to Offer Exhibits

The Missouri Landowners Alliance (MLA) hereby respectfully gives notice that at the oral argument scheduled for August 3, 2017, it will offer the following four exhibits into evidence in this case:

1. The Commission's Report and Order of April 27, 2016 in Case No. EA-2015-0146 (the ATXI case).

2. The cover page, page 2 and pages 59-74 of ATXI's Initial Post-Hearing Brief in Case No. EA-2015-1046, filed March 4, 2016, EFIS No. 266.

3. The cover page, page 4, and pages 15-25 of the Brief of Respondent Ameren Transmission Company of Illinois (ATXI) filed on January 6, 2017 in the appeal of Commission Case No. EA-2015-0146; i.e., in case No. WD79883 at the Western District of the Missouri Court of Appeals.

4. The cover page and pages 16-23 of the Brief of Respondent Public Service Commission, filed on January 6, 2017 in the same case identified in item 3 above.

Given what is at stake in this case, and the widely differing views of several parties regarding the impact here of the decision by the Western District in the ATXI case, it seems fair to assume that this case may ultimately be appealed.

If that happens, a major area of contention undoubtedly will be the precedential value in this case (if any) of the Western District's decision in the ATXI case. That debate would no doubt focus on the Western District's finding that under the circumstances of that case, Section 393.170 required ATXI to obtain county commission consents before the Commission could grant the CCN.

In the event this case is appealed, the MLA 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. Without this information, the reviewing court would be operating in a near-vacuum regarding the factors which at least arguably played a key part in the outcome of the Western District's decision.

For example, if the Commission decides this case as recommended in the MLA's Supplemental Brief, then on appeal the Commission (and the MLA) should logically be allowed to tell the appellate court that ATXI raised essentially the same argument at both the Commission and the Western District which Grain Belt seems likely to raise on appeal with respect to the distinction between subsections 1 and 2 of Section 393.170. However, 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.

Each of the four documents in question is readily available to all the parties to this case.<sup>1</sup> The MLA has already relied upon language from all four documents in its Supplemental Brief.<sup>2</sup> Grain Belt and MJMEUC have also referenced the first of these

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<sup>1</sup> The first two items are of course available on EFIS. The second two are available on Case.net.

<sup>2</sup> See e.g. MLA's Supplemental Brief at page p. 1 f.n.1, p. 3 f.n. 10 and p. 4.

documents in their own pleadings -- the Commission's ATXI Order.<sup>3</sup> No objections have been raised to any of these references, and so the parties have at least tacitly accepted that the documents in question may be relied upon in arguing their respective positions here.

The MLA simply wants to insure that the reviewing court in any appeal of this case would have those same documents available to it when rendering its decision. The court may or may not find any of the documents to be of any use in that regard. However, the record on appeal should at least allow the Court to make that determination on its own.

The MLA recognizes that the evidentiary hearings in this case were completed on March 24, 2017. However, at that point the ATXI decision had not been issued, much less become final. And accordingly, at that point the significance of the three other documents listed above was not apparent either. Thus the MLA will respectfully ask for a waiver pursuant to Rule 4 CSR 240-2.015 of any rule or practice which would normally require that exhibits be offered before the close of the evidentiary hearings.

Finally, the MLA has attempted to save on paper and copying costs by proposing to offer only what it views as the relevant portions of the last three of the documents identified above.<sup>4</sup> However, if any party believes that all or additional portions of those

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<sup>3</sup>See reference to the Commission's Report and Order in the ATXI case at p. 4 of Grain Belt's Supplemental Brief and page 4 of MJMEUC's Supplemental Brief. In addition, Grain Belt has cited and relied upon the Commission's Application to Transfer the Western District's decision to the Missouri Supreme Court, SC96427. See Grain Belt's Supplemental Brief, pp. 7-8; and "Response of Grain Belt Express to Agenda Discussion of Notice Regarding Case Status", pp. 3-4, filed June 1, 2017. That document is certainly no more a part of the record in this case than the second, third and fourth documents which the MLA is proposing to offer as exhibits.

<sup>4</sup>For example, much of the second of the four documents involves a detailed discussion of the *Tartan* criteria, and other matters totally unrelated to the issue at hand.

documents should be included as part of the Exhibits, the MLA will add such pages to its proposed Exhibits if so notified before the end of this month.<sup>5</sup>

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 23<sup>rd</sup> day of July, 2017.

/s/ Paul A. Agathen  
Paul A. Agathen

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<sup>5</sup> As far as the MLA is concerned, a party suggesting the inclusion of any such additional material would not be waiving any objection to the introduction of the Exhibits.