

**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 Current)
Transmission Line and an Associated Converter)
Station Providing an Interconnection on the)
Maywood-Montgomery 345kV Transmission Line)
)

Case No. EA-2016-0358

STAFF'S SUPPLEMENTAL BRIEF

Staff files this supplemental brief in response to the Commission's July 15, 2017, Order Directing Filing and Setting Oral Arguments. There the Commission ordered, "Any party wishing to submit a supplemental brief on the issues described in the body of this order shall do so no later than July 18, 2017." Those issues are what the Commission may do regarding (1) Grain Belt's request for a CCN after the Missouri Western District Court of Appeals issued its mandate to the Commission on June 28, 2017, in Case No. WD79883 vacating the Commission's decision in Case No. EA-2015-0146 in accordance with its March 28, 2017, opinion¹; (2) Grain Belt's requests that the Commission (a) determine the issues in this case, (b) issue Grain Belt the CCN it requests and (c) grant Grain Belt relief from complying with the requirements of rules 4 CSR 240-3.105(1)(D)1 and 4 CSR 240-3.105(2); and (3) the Missouri Landowners Alliance's motion to dismiss based on the Missouri Western District Court of Appeals opinion in the Case No. WD79883.

¹*In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the alternative, a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-Volt Electric Transmission Line from Palmyra, Missouri, to the Iowa Border and Associated Substation Near Kirksville, Missouri v. Public Service Commission of Missouri*, No. WD79883, slip op. (Mo. App. W.D. March 28, 2017).

When the parties filed their briefs in this case, the Western District Court of Appeal's opinion was not final. It is now. At page eight of its slip opinion the court states its holding as follows:

Our interpretation of the statute [(section 393.170, RSMo. 2016)]—that it mandates that the applicant receive the consent of local government authorities before the PSC issues a CCN—gives plain meaning to the legislature's use of the mandatory term "shall" when it describes what documents the applicant must submit to the PSC before a CCN will be issued. Accordingly, county commission assents required by section 229.100 and 4 CSR 240-3.105(1)(D)1 must be submitted to the PSC *before* the PSC grants a CCN. While section 393.170.3 grants the PSC statutory authority to impose reasonable and necessary conditions on a CCN, there is no statute authorizing the PSC to grant a preliminary or conditional CCN contingent on the required county commission consents being subsequently obtained. The PSC's issuance of a CCN contingent on ATXI's subsequent provision of required county commission assents was unlawful as it exceeded the PSC's statutory authority. (Footnote omitted; emphasis in original.)

The Western District Court of Appeal's holding means that, because Grain Belt does not have consent from the Caldwell County Commission for Grain Belt's proposed transmission line to cross the public roads and highways in Caldwell County, this Commission cannot lawfully grant Grain Belt the CCN it requests for the Grain Belt transmission line project.

The salient facts here regarding Commission jurisdiction are no different than those in the Mark Twain transmission line case. Both are requests for CCNs for transmission lines that would traverse multiple Missouri counties. In both cases the applicants argue in every venue that their requests were made in reliance on § 393.170.1, RSMo., for "line certificates" as addressed in *State ex rel.*

Harline v. Pub. Serv. Comm'n, 343 S.W.2d 177, 182 (Mo. App. W.D. 1960).² In Case No. WD79883, the Western District Court of Appeals rejected the argument squarely presented to it that the county consent required by § 229.100, RSMo., is not a prerequisite to the Commission issuing a CCN for a line, regardless of the *Harline*-based distinction between § 393.170.1, RSMo., “line” certificates and § 393.170.2, RSMo., “area” certificates.

Relieving Grain Belt from the requirements of rules 4 CSR 240-3.105(1)(D)1 and 4 CSR 240-3.105(2) would provide Grain Belt with no effective relief because statutes (§§ 229.100 and 393.179, RSMo.) are what require Grain Belt to obtain consents from the counties in Missouri to cross the public roads and highways where its Grain Belt transmission line project will cross them. In the text of rule 4 CSR 240-3.015(1) the Commission acknowledges its authority to grant relief from statutes is limited to those instances where the legislature, or voters, have authorized the Commission to grant relief from a statutory requirement:

(1) The requirements for filing applications for waivers or variances from commission rules and tariff provisions, as well as those statutory provisions that may be waived, are contained in Chapter 2 of the commission’s rules in rule 4 CSR 240-2.060.

² Case No. EA-2016-0358, *Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity*, p. 1, filed August 30, 2016; Case No. EA-2016-0358, *Opposition of Grain Belt Express to Motion of Missouri Landowners Alliance for Expedited Treatment and Motion to Dismiss Application or Hold Case In Abeyance*, p. 3, filed March 31, 2017; Case No. EA-2016-0358, *Initial Post-Hearing Brief of Applicant Grain Belt Express Clean Line LLC*, p. 7, 13-18, filed April 10, 2017; Case No. EA-2016-0358, *Grain Belt’s Proposed Findings of Fact and Conclusions of Law*, pp. 40-43, filed April 25, 2017; Case No. EA-2016-0358, *Response of Grain Belt Express to Agenda Discussion of Notice Regarding Case Status*, p. 2, filed June 1, 2017; Case No. EA-2016-0358, *Request of Grain Belt Express and Motion for Waiver or Variance of Filing Requirements*, pp. 2-3, filed June 29, 2017; and Case No. EA-2015-0146, *ATXI’s Response in Opposition to Neighbors United’s Motion to Dismiss*, pp. 3, 12-14 filed October 28, 2015; Case No. EA-2015-0146; *ATXI’s Initial Post-Hearing Brief*, p. 2 filed March 4, 2016; *Application for Rehearing Motion for Reconsideration, and Request for Clarification of Ameren Transmission Company of Illinois*, p. 2, filed May 26, 2016; Case No. WD79883, *Brief of Respondent Ameren Transmission Company of Illinois*, pp. 15-33, filed January 10, 2017; Case No. WD79883, *ATXI’s Application for Transfer to the Supreme Court and Suggestions in Support*, pp. 3, 7-10 filed April 12, 2017; and Case No. SC96427, *ATXI’s Application for Transfer*, pp. 2-8, filed May 16, 2017.

No one asserts the Commission has authority to grant Grain Belt relief from either § 229.100 or § 393.170, RSMo.

Conclusion

The law as expounded by the Western District Court of Appeals in its opinion in Case No. WD79883 requires that, because Grain Belt has failed to prove that it has the consent of Caldwell County required by § 229.100, RSMo., to cross the public roads and highways in Caldwell county, which consent the Missouri Western District Court of Appeals has held is required by § 393.170, RSMo. as a precondition to the Commission granting Grain Belt the CCN it requests, this Commission should dismiss this case, whether it does so by granting the Missouri Landowners Alliance's motion to dismiss or otherwise.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6th day of July, 2017.

/s/ Nathan Williams