

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt)
Express Clean Line LLC for 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 345 kV)
transmission line.)

Case No. EA-2016-0358

**OPPOSITION OF INFINITY WIND POWER TO MISSOURI LANDOWNERS
ALLIANCE MOTION FOR EXPEDITED TREATMENT AND MOTION TO
DISMISS APPLICATION, OR ALTERNATIVELY, TO HOLD CASE IN ABEYANCE**

Infinity Wind Power (Infinity) hereby opposes the Missouri Landowners Alliance's (MLA) *Motion for Expedited Treatment and Motion to Dismiss Application, or Alternatively, To Hold Case in Abeyance* (MLA Motion), and states the following:

I. BACKGROUND

1. On March 28, 2017, MLA filed its Motion in response to a Western District of the Missouri Court of Appeals decision¹ relating to an Order of this Commission in File No. EA-2015-0146.²

2. On March 29, 2017, the Commission issued its *Order Directing Filing Regarding Motion to Dismiss, or in Alternative, Hold Case in Abeyance* in the instant case, instructing interested parties to file responses to the MLA Motion no later than March 31, 2017. Infinity files this response pursuant to the Commission's March 29th Order.

¹ *Neighbors United Against Ameren's Power Line v. PSC*, No. WD79883 (Mar. 28, 2017) (*Neighbors United*).

² File No. EA-2015-0146 involved a certificate of convenience and necessity (CCN) request of Ameren Transmission Company of Illinois (ATXI) for a transmission line commonly referred to as the Mark Twain Project. Upon the Commission's issuance of a conditional CCN to ATXI, Neighbors United took the matter on appeal.

II. DISCUSSION

3. In *Neighbors United*, the Court held that the Commission exceeded its statutory authority by granting ATXI's request for a CCN conditioned on ATXI obtaining county assents as required by Section 393.170.2 and Section 229.100.³ The Court found that the county assents were a prerequisite to the issuance of a CCN under 393.170.2.⁴

4. In its Motion, MLA argued that the Court's decision in *Neighbors United* should result in the Commission's dismissal of the instant docket, or at minimum require the Grain Belt Express' Application be held in abeyance for no more than six months.⁵ In support, MLA cited to the Court's analysis and discussion regarding Section 393.170.2 and the failure of ATXI to submit the county commission assents required pursuant to that provision of the statute, prior to the Commission's issuance of the CCN.⁶ MLA argued that based on *Neighbors United*, the Commission is prohibited from issuing Grain Belt Express' request for a CCN. However, a review of Grain Belt Express' Application in this matter shows that Grain Belt Express' request is pursuant to Section 393.170.1, and not the provision cited to and discussed by the Court in *Neighbors United*.

5. MLA offers no distinction with regard to the Court's discussion of 393.170.2 in *Neighbor's United* and Grain Belt Express' Application pursuant to 393.170.1. MLA also fails to note that Missouri courts have historically recognized the distinction between these two provisions of 393.170.⁷ Because the Court's discussion and analysis in *Neighbors United* was focused on 393.170.2, it is unclear how that decision precludes the Commission's determination

³ *Neighbors United* at 8.

⁴ *Id.*

⁵ MLA Motion, pp.3-4.

⁶ MLA Motion, p. 2.

⁷ *State ex rel. Union Elec. Co. v. PSC.*, 770 S.W.2d 283,285; *State ex rel. Harline v. PSC.*, 343 S.W.2d 177, 182-83 (Mo. App. K.C. 1960); *StopAquila.org v. Aquila, Inc.*, 180 S.W.3d 24, 33 (Mo. App. W.D. 2005).

with regard to Grain Belt Express' Application, which was filed pursuant to a separate statutory provision.

6. Further, nothing in *Neighbors United* precludes the Commission for considering the record evidence with regard to the Tartan factors. The issue of county assents notwithstanding, a determination must still be made with regard to the Tartan factors, and for purposes of efficiency the Commission should conduct that analysis as contemplated under the existing procedural schedule so as not to waste the time and resources expended thus far.

7. Infinity respectfully requests the Commission deny the MLA Motion. The parties to this proceeding have expended great time and resources in submitting this case to the Commission and a dismissal, or even an abeyance of the matter, would be wasteful. Dismissing Grain Belt Express' Application, or postponing the filing of briefs as suggested by MLA, based on a decision that should have no bearing on the Application before the Commission in this docket, would unnecessarily burden the parties.

WHEREFORE, Infinity Wind Power respectfully requests the Commission deny the Missouri Landowners Alliance's *Motion for Expedited Treatment and Motion to Dismiss Application, Or Alternatively, To Hold Case In Abeyance.*

Respectfully submitted,

/s/ Terri Pemberton

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ATTORNEYS FOR INFINITY WIND POWER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the parties to this proceeding by email or U.S. Mail, postage prepaid, this 31st day of March 2017.

/s/ Terri Pemberton

Terri Pemberton

Attorney for Infinity Wind Power