

**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-2014-0207

**OPPOSITION OF GRAIN BELT EXPRESS CLEAN LINE LLC
TO APPLICATION TO INTERVENE OF UNITED FOR MISSOURI, INC.**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”), pursuant to 4 CSR 240-2.075, states the following in opposition to the Application to Intervene of United for Missouri, Inc. (“UFM”):

1. On March 27, 2014 the Commission issued its Order Directing Notice, Setting Intervention Deadline, and Directing Filing of Staff Recommendation. In that Order the Commission established April 25, 2014 as the deadline by which any person or entity wishing to intervene must file its application to do so.

2. On April 24, 2014 UFM, an anti- eminent domain interest group, filed its Application to Intervene.

3. The rule governing intervention, 4 CSR 240-2.075, provides that the Commission "may" grant an application for intervention. It is permissive and, therefore, by its nature, discretionary. The Commission may, in its discretion, grant a proposed intervenor's application if (a) the party “has an interest that both is different from that of the general public and may be adversely affected by a final order arising from the case” or (b) granting the proposed

intervention “would serve the public interest.” See 4 CSR 240-2.075(3)(A)-(B). UFM satisfies neither requirement.

4. UFM's interest in this case is no different from that of the general public. Indeed, Article X of its Articles of Incorporation state that it's purpose is “the promotion of the common good and general welfare of the people of the State of Missouri” See Ex. A at 2, Application fo Intervene of United for Missouri.

5. The Missouri Supreme Court has defined "interest" as follows:

“Interest,” generally, means a concern which is more than mere curiosity, or academic or sentimental desire. One interested in an action is one who is interested in the outcome or result thereof because he has a legal right which will be directly affected thereby or a legal liability which will be directly enlarged or diminished by the judgment or decree in such action.

As used in ... intervention statutes generally, “interest” means a direct and immediate claim to, and having its origin in, the demand made or proceeds sought or prayed by one of the parties to the original action, but such “interest” does not include a mere consequential, remote or conjectural possibility of being in some manner affected by the result of the original action; to come within the above statute, the “interest” must be such an immediate and direct claim upon the very subject matter of the action that intervener will either gain or lose by the direct operation of the judgment that may be rendered therein.

State ex rel. Farmers Mut. Auto. Ins. Co. v. Weber, 273 S.W.2d 318, 321 (Mo. en banc 1954) (original emphasis). See Laclede Gas Co. v. Abrahamson, 296 S.W.2d 100 (Mo. 1956) (affirming orders denying intervention to owners of property adjoining land actually being condemned for the establishment of an underground gas storage reservoir).

6. In State ex rel. Consumers Pub. Serv. Co. v. PSC, 180 S.W.2d 40, 46 (Mo. 1944), the Supreme Court declared that the interest necessary to authorize intervention in Commission proceedings should be that of a party who brings a complaint, or of a customer, a competitor, or a representative of locally affected persons. It may also be a party whose property rights could be affected. Applying these criteria, the Court dismissed the appeal of a public utility whose interest was not “sufficient to constitute a reasonable basis for intervention.” Id. at 47.

7. The Commission has stated that its "chief concern in considering applications to intervene has always been that the intervention applicant have an articulable interest in the subject matter that is different in some way from that of the general public. The reason is that the general public's interest is represented by both the Commission's Staff and by the Public Counsel." In re Union Elec. Co., No. EA-2005-0180, Order Granting Intervention at 7-8 (Jan. 25, 2005), citing State ex rel. Dyer v. PSC, 341 S.W.2d 795, 796-797 (Mo. 1960) and Smith v. PSC, 336 S.W.2d 491, 494 (Mo. 1960). See Staff v. Cass County Tel. Co., No. TC-2005-0357, Order Denying Application to Intervene But Inviting the State of Missouri to File As an Amicus Curiae at 3-4 (Feb. 9, 2006) (intervention denied because the State did not have an interest that is different than that of the general public); In re CenturyTel Solutions, LLC, No. LA-2004-0105, Order Denying Intervention at 3-4 (Dec. 18, 2003) (intervention denied because applicant did not have an interest different from that of the general public and because Staff and Public Counsel are able to protect applicant's interests).

8. By the same token, UFM lacks any interest that might be adversely affected by the outcome of this case, thus removing the other ground in 4 CSR 240-2.075(3)(A) from consideration. UFM fails to identify any specific member or group of members potentially affected by a final determination in this case. Indeed, it states in Article VI of its Articles of Incorporation that it “shall have no members.” See Ex. A, Application to Intervene of United for

Missouri. Accordingly, it has failed to identify any “stake” in the outcome of this particular case. See Union Elec. Co., Order Granting Intervention at 8. See In re InterVox Link, LLC, No. TA-2013-0476, Order Denying Application to Intervene and Granting a Certificate of Service Authority to Provide Private Payphone Services at 2 (June 5, 2013) (denied intervention to applicant that failed to demonstrate it might be adversely affected by the case).

9. UFM states that as a matter of policy it is generally opposed to “the use of the state’s power of eminent domain for private business interests.” See UFM Application at ¶ 6. However, that is precisely what Missouri law has authorized and regulated for well over a century. See § 523.010, et seq., Mo. Rev. Stat. (2000), as amended. Any general opposition to that policy should be raised with the General Assembly, not at the Public Service Commission which has no power to alter state statutes. Clearly, UFM has no legal rights which will be affected, directly or indirectly, by this case.

10. Granting UFM's application would also not serve the public interest. This is the alternative ground on which the Commission may in its discretion allow intervention. See 4 CSR 240-2.075(3)(B). UFM discloses no relevant interest or expertise that would contribute to the record in this case where Grain Belt Express seeks a certificate of convenience and necessity. UFM simply opposes the exercise of the power of eminent domain by private companies, which has long been permitted by Missouri law. See UFM Application at ¶¶ 1, 4, 6.

11. If UFM wishes to advise the Commission on its views in this regard, it may petition the Commission for leave to file a brief as an amicus curiae pursuant to 4 CSR 240-2.075(11). See Staff v. Cass County Tel. Co., No. TC-2005-0357, Order Denying Application to Intervene But Inviting the State of Missouri to File As an Amicus Curiae at 3-4 (Feb. 9, 2006).

12. UFM has no interest that is different from that of the general public. It is also clear that it has no interest that would be adversely affected by a final order in this case.

Furthermore, because its views on eminent domain should be taken up with the General Assembly, and not an administrative agency like the Commission, granting intervention to UFM would not serve the public interest.

WHEREFORE, Grain Belt Express Clean Line LLC respectfully requests that the Commission issue an order denying the Application to Intervene of United for Missouri.

Respectfully submitted,

/s/ Karl Zobrist

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**Attorneys for Grain Belt Express Clean Line
LLC**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the parties to this case by email or U.S. Mail, postage prepaid, this 2nd day of May, 2014.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean Line LLC