

**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, Control,) **Case No. EA-2016-0358**
Manage, Operate 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)

**MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT'S
RESPONSE TO MISSOURI LANDOWNERS ALLIANCE MOTION TO STRIKE**

The Missouri Landowners Alliance's ("MLA") motion to dismiss these proceedings should be denied. MLA's motion centers on the recent Court of Appeals for the Western District's opinion of *Neighbors United Against Ameren's Powerline v. Public Service Commission*, (WD798839), and its purported binding effect on the matters set forth in this proceeding. MLA's reliance is misplaced. To the extent that *Neighbor's United* has any relevance to these proceedings, it is not a final decision and cannot bind this proceeding. Second, should the Commission believe that there is a binding effect, prudential considerations warrant a preliminary finding on the relevant *Tartan* factors and a reasonable stay to secure any outstanding county commission assents.

A decision of the appellate court is considered final at the time the mandate is issued. *Meierer v. Meierer*, 876 S.W.2d 36, 37 (Mo. App. 1994). Generally, a mandate is not issued until the time for filing a post-disposition motion has expired. If a post-disposition motion is filed, the mandate will not issue until the appellate court and the Supreme Court of Missouri resolve all such motions. At this point, only the panel decision has issued from the Court of Appeals. Respondents are still entitled to file for a rehearing en banc or move to transfer the proceeding to the Missouri Supreme Court. Rule 83.02 and Rule 84.17(a)(1). This is all in

addition to the further process that may be had before the Missouri Supreme Court in the form of a motion for transfer. Rule 83.04 and Rule 83.05. Until this process is conclusively resolved, the decision is not binding on the Commission—instead, the motion should be treated as one that should be denied for want of ripeness.

However, to the extent that the Commission feels that the *Neighbors United* decision should cause it to immediately act on this proceeding, it should only do so in a way that will best preserve the resources of the Commission and of the dozen or so of real parties in interest before it. During the hearing on this matter, all of the parties expending significant resources to fully litigate several issues related to the project to the Commission. Restarting the process from the square one would require the expenditure of these resources all over again. Instead, the Commission is empowered to make a preliminary finding on the *Tartan* factors that in no way depend on the county commission assents. With such a preliminary finding in hand, the Commission could stay this proceeding for a reasonable period of time,¹ for Grain Belt Express to secure any remainder assents. If such assents are obtained, the Commission could then issue a Certificate.

Respectfully submitted,

/s/ Brian Bear

Brian Bear, Bar #61957

General Counsel

Missouri Department of Economic Development

P.O. Box 1157

Jefferson City, MO 65102

Phone: 573-526-2423

E: brian.bear@ded.mo.gov

Attorney for Missouri Department of Economic
Development

¹ The Department would suggest six months as a reasonable time, but would leave this decision to the sound discretion of the Commission.

**Attorney for Missouri Department of Economic
Development**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all
counsel of record this 31st day of March, 2017.

/s/ Brian Bear _____

Brian Bear