

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 )

REPLY OF MISSOURI LANDOWNERS ALLIANCE TO OPPOSITION  
OF GRAIN BELT EXPRESS TO MLA’S MOTION TO STRIKE

Comes now the Missouri Landowners Alliance (MLA), pursuant to Commission Rule 4 CSR 240-2.080(13), and respectfully submits the following Reply to the “Opposition of Grain Belt Express to Missouri Landowners Alliance Motion to Strike”, (Opposition) filed on May 2, 2017.

Grain Belt’s Opposition was filed in response to the MLA’s Motion to strike certain material which Grain Belt included in its Reply Brief, and which is not a part of the record in this case.

Grain Belt faults the MLA for relying on case law which generally prohibits a party from relying in appellate court briefs on material which was not a part of the record. However, Grain Belt fails to cite a single decision from either the courts or this Commission which would sanction what they are attempting to do here. Thus the cases cited by the MLA provide the only precedent offered by either party on this issue.

Instead of court or Commission decisions, Grain Belt relies on Commission Rule 240-2.140. The rule in question addresses “Briefs and Oral Argument”, which Grain Belt correctly states does not contain any restriction or prohibition on citing matters outside

the record.<sup>1</sup> The rule also does not contain any restriction or prohibition on the use of profanity, or of factual misrepresentations. Instead, the rule in question covers procedural matters such as timing for the filing of briefs. Presumably, the Commission saw no need to address the fundamental rules of what a brief may and may not include. That fact obviously does not mean that the Commission authorized the parties to simply ignore those rules.

In defending the use of Dr. Proctor's testimony from the 2014 case, Grain Belt claims that the MLA quoted Dr. Proctor "in similar fashion" in its own brief.<sup>2</sup> However, the testimony of Dr. Proctor relied on by the MLA (i.e.; that he determined combined cycle gas generation is cheaper than Kansas wind)<sup>3</sup> is referenced in the Commission's own findings in the 2014 case.<sup>4</sup> And of course the Commission's Report and Order from that case is in evidence here as Exhibit 321. In contrast, Grain Belt simply reached back into the transcripts from the 2014 case, and quoted from material which is not remotely a part of the record here.

If the Commission does not strike the material in question, then the MLA respectfully asks that the hearings be briefly reconvened in order for the MLA to cross-examine Mr. Berry on the material attached to Grain Belt's Reply Brief as Attachment 1. The Commission should not allow those self-serving statements to become a part of the record without granting opposing parties the opportunity to challenge what was said.

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<sup>1</sup> Opposition, p. 5.

<sup>2</sup> Opposition, p. 3.

<sup>3</sup> MLA's Initial Brief, p. 18

<sup>4</sup> Report and Order, pp. 15-16 & 23.

In addition, if the MLA's Motion to Strike is denied, the MLA also requests the opportunity to submit additional material into the record for the Commission's consideration, and to file a supplemental brief regarding the newly filed material.

Relying on the material in question without providing the other parties the opportunity to cross-examine and to offer additional evidence on their own would deprive the opposing parties of their right to due process, as guaranteed by Amendments V and XIV to the United States Constitution, and Article 1 Section 10 of the Missouri Constitution.

Wherefore, the MLA respectfully asks the Commission to strike the second and third paragraphs of page 26 of Grain Belt's Reply Brief, its Attachment A thereto, and the last sentence of the last full paragraph of page 27.

If the Commission denies the Motion to Strike, then the MLA respectfully asks that the proceedings be reopened in order to allow the parties the opportunity to (1) cross-examine Mr. Berry regarding the contents of Attachment 1 to Grain Belt's Reply Brief; (2) to offer additional evidence for the Commission's consideration; and (3) to file supplemental briefs regarding any such additional evidence.

Respectfully submitted,

Missouri Landowners Alliance

/s/Paul A. Agathen

Paul A. Agathen

485 Oak Field Ct.

Washington, MO 63090

[Paa0408@aol.com](mailto:Paa0408@aol.com)

(636)980-6403

MO Bar No. 24756

Attorney for

Missouri Landowners Alliance

#### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served upon the parties to this case by electronic mail this 5<sup>th</sup> day of May, 2017.

/s/ Paul A. Agathen

Paul A. Agathen