

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

<b>In the Matter of the Application of Grain</b>	)	
<b>Belt Express Clean Line LLC for Certificate</b>	)	
<b>of Convenience and Necessity Authorizing it</b>	)	
<b>to Construct, Own, Operate, Control,</b>	)	<b>File No. EA-2014-0207</b>
<b>Manage and Maintain a High Voltage,</b>	)	
<b>Direct Current Transmission Line and an</b>	)	
<b>Associated Converter Station Providing an</b>	)	
<b>Interconnection on the Maywood-</b>	)	
<b>Montgomery 345 kV transmission line.</b>	)	

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

Comes now, United for Missouri (“UFM”) and, in response to Grain Belt Express Clean Line LLC Opposition to Application to Intervene of United For Missouri, Inc. (“Opposition”), states as follows:

1. On April 24, 2014, UFM filed with the Missouri Public Service Commission (“Commission”) its Application to Intervene of United For Missouri, Inc. (“UFM’s Application”) in the above referenced case.
2. On May 2, 2014, Grain Belt Express filed its Opposition.
3. The Commission’s authority to grant intervention is broad and discretionary. The statute governing intervention before the Commission provides that the Commission “may” grant an application to any corporation or person. “At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant, the public counsel and the corporation, person or public utility complained of, and

such corporations and persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence.” Mo. Rev. Stat. § 386.420.1 (2013).

4. The authority of the Commission in granting intervention is to be viewed expansively. In State ex rel. Consumers Pub. Service Co. v. Public Service Com’n, the Missouri Supreme Court, wrote:

The question here is: To whom did the Legislature intend to make this method of review available? Since the public welfare is involved in every Commission case (and is the controlling factor in its decision), to a certain extent every citizen is interested in all its cases. But it is certainly not intended that every citizen may participate in any case. That would prevent the Commission from functioning efficiently.

It seems clearly intended that no direct pecuniary or property rights, or infringement of civil rights of a person, must be involved before he could be a party to a proceeding before the Commission. Section 5686 provides: "complaint may be made by ... any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization ... by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility,...

180 S.W.2d 40, 45 (Mo. 1944). In a later case, citing *Consumers* for support, the Missouri Court of Appeals, Kansas City District, declared, “The grant made by the Legislature to the Commission is broad with no qualifications other than the fact the Commission must make an order allowing intervention.” See State ex rel. Brink’s Inc. v. Public Service Com’n, 535 S.W.2d 582, 584 (Mo. App. 1976).

5. There is no language of “interest” in the statute or the Court’s decision. Rather, the Court looked to such entities that could file a complaint. Missouri statutes presently provide, as did Section 5686 (cited above) that, “Complaint may be made by . . . any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal

corporation, by petition or complaint in writing, . . . .” Mo. Rev. Stat. § 386.390.1 (2013). UFM certainly fits the description of a civic, commercial, or mercantile association or organization.

6. While the Commission’s authority is broad regarding the grant of intervention, it must exercise its grant of authority in an impartial manner. This requires that its decisions be free of actual bias or the probability of actual bias. State ex rel. Praxair, Inc. v. Missouri Public Service Commission, 344 S.W.3d 178, 191 (Mo. 2011). “The decision of the [PSC] is reasonable where the order is supported by substantial, competent evidence on the whole record; the decision is not arbitrary or capricious or where the [PSC] has not abused its discretion.” 344 S.W.3d at 184. The Commission must be consistent in the application of its rules.

7. The Commission’s rules provide that, “The commission may grant a motion to intervene or add new member(s) if— (A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or (B) Granting the proposed intervention would serve the public interest.” 4 CSR 240-2.075.

8. In In re Union Electric Co., File No. EA-2012-0281, Order Regarding Application to Intervene, p. 3 (March 6, 2013) (“March 6 Order”), the Commission observed that, “Generally, the Commission has interpreted those intervention standards broadly in the interest of having all positions presented and argued to the Commission.” In that order, the Commission granted the Sierra Club’s Application to Intervene. The Sierra Club was a corporation organized and existing under the non-profit corporation laws of California. See Application to Intervene, p. 1. Union Electric argued that Sierra Club’s interest in clean water and protection of the environment was properly addressed by the Missouri Department of Natural Resources. See

March 6 Order. The Commission found that the Sierra Club “should be allowed an opportunity to present their positions to the Commission.”

9. In In re Renewable Energy Standard, File No. EO-2014-0291, the Commission granted the Application to Intervene of Earth Island Institute d/b/a Renew Missouri. Renew Missouri was a project of Earth Island Institute, a not-for-profit corporation organized under the laws of California. Renew Missouri’s interest, as expressed in its Application to Intervene, was “the full implementation and enforcement of the RES in that the organization’s mission includes the promotion of renewable energy in Missouri.” See Application to Intervene, p. 1. While intervention was not technically required in order for “any interested persons or entities” to file comments on the Ameren Missouri’s RES report and plan in that case, “party” status was required for Renew Missouri to obtain Ameren Missouri’s highly confidential report and plan. The Commission granted Renew Missouri intervention in order to grant it “party” status and access to Ameren Missouri’s highly confidential information.

10. Both of these cases indicate that the Commission has exercised its authority to broadly grant authority to parties seeking to comment on points of public policy. Intervention was granted to two out-of-state interests that sought to comment on certain social values that were important to those organizations, particularly environmental concerns.

11. UFM has an interest in and promotes the American free enterprise system. This case by its very nature involves several competing public interests. It could be as Grain Belt Express claims, to enhance the reliability of the electric transmission network, to offer customers low-cost Kansas wind energy, and to enable compliance with Missouri’s RES standards. It might be to protect the individual land owner rights along the Grain Belt Express project route, as the Missouri Farm Bureau claims. It could be, as the Sierra Club says, in to promote wind

energy. Or it could be economic development, as Missouri Division of Energy claims. In the final analysis, the Commission will be confronted with competing public interests. UFM has an interest in defending and promoting the free enterprise system and the property rights of its members in the state of Missouri against what could be competing public interests in the case before this Commission and any possible subsequent court litigation.

12. UFM certainly meets the requirement of being a “civic, commercial, mercantile, traffic, agriculture or manufacturing association or organization.” UFM is a non-profit association formed under chapter 355 of the Missouri Statutes. In UFM’s Application to Intervene, UFM stated that it seeks to promote the American free enterprise system. “Free enterprise” is defined in the tenth edition of Merriam Webster’s Collegiate Dictionary as, “freedom of private business to organize and operate for profit in a competitive system without interference by government beyond regulation necessary to protect public interest and keep the national economy in balance.” Further, UFM’s mission statement includes the following statement as one of its purposes: “Removing and preventing unnecessary barriers to entrepreneurship and opportunity by sparking citizen involvement in the regulatory process early on in order to reduce red tape.”<sup>1</sup> With over 76,000 members, UFM has a substantial interest in representing its members and fulfilling its civic and commercial mission. A ruling of this Commission would adversely affect this interest of UFM. No other entity, including the Commission Staff or the Public Counsel, can adequately represent that interest. And it would be in the public interest to hear UFM’s perspective.

13. Grain Belt Express’ cavalier treatment of “the use of the state’s power of eminent domain for private business interests,” at paragraph 9 of its Opposition, is a case in point. Grain

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<sup>1</sup> See <http://www.unitedformissouri.org/about>.

Belt Express assumes away in one dismissive sentence a central issue in this case and the very issue that causes UFM's concern. It is not settled that Missouri has authorized and regulated "the use of the state's power of eminent domain for private business interests for well over a century." Article I, Section 28 of the Missouri Constitution declares, "That private property shall not be taken for private use with or without compensation, unless by consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in the manner prescribed by law." UFM finds Grain Belt Express' position on property rights disturbing and desires to make a record for the preservation of Article I, Section 28 of the Missouri Constitution and requests the right to be heard. Regulatory certainty is valued within the utility industry, as providing an environment for utility companies to plan for the future. Secure property rights are no less valuable in the economy at large for giving business a stable environment in which to be conducted. As proposed by Grain Belt Express, the prosecution of its application in this case may result in a Commission order which adversely affect this interest.

14. The cases Grain Belt Express cite denying intervention are not on point. In Staff v. Cass County Tel. Co., File No. TC-2005-0357, the Office of Attorney General ("State") requested intervention after Staff and Cass County Telephone Company had filed a stipulation and agreement resolving all contested issues relating to a Staff complaint. In its application to intervene, alleging the simple status of a telephone service customer, the State stated it wanted to express public policy concerns about the stipulation and agreement. The Commission stated in its order, "Most fundamentally, the State has failed to show good cause for allowing it to intervene in this case at such a late date." See Order Denying Application to Intervene, But Inviting the State of Missouri to File as an Amicus Curiae, at 3-4 (February 9, 2006). Rather

than restricting intervention, the Commission suggested that the State could have sought intervention at the inception of the complaint. Considering the late stage of the proceeding and the desire of the State simply to comment, the Commission found the Staff and OPC adequate parties to represent the State and suggested that an amicus curiae brief would be adequate to the State's purposes.

15. In In re Century Tel Solutions, LLC, File No. LA-2004-0105, the Commission denied intervention to Missouri Independent Telephone Company Group's ("MITG") in the matter of CenturyTel Solutions' ("CTS") application for a certificate of service authority. CTS was seeking an interexchange and non-switched local carrier in exchanges MITG served. The Commission stated its rationale as follows: "Interexchange telecommunications is all but a completely competitive industry. . . . To the extent that MITG fears CTS might engage in fraud and self-dealing, Staff and the Office of Public Counsel are able to protect MITG's interests, if any." See Order Denying Intervention at 3 (December 18, 2003). In essence, the Commission's ruling was founded on the observation that the issues MITG raised were beyond the scope of the Commission's inquiry in that particular case. The extraneous concern that MITG had regarding CTS's fraud and self-dealing were well within the ken of Staff and Office of Public Counsel to handle.

16. Grain Belt Express makes a curious argument at paragraph 8 of its Opposition that UFM has no members and therefore cannot have an interest in the case. The statement in Article VI of its Articles of Incorporation is a requirement of the Articles of Incorporation for all nonprofit corporation under section 355.096 of the Revised Statutes of Missouri. This does not diminish the interest of UFM, which has the full powers and authority, including the authority to sue, complain, and defend in its corporate name. Mo. Rev. Stat. § 355.131.1 (2013). Further,

the case cited by Grain Belt Express, again, is not on point. Similarly to *Century Tel Solutions*, the Commission found private pay telephone service to be competitive and subject to minimum regulation pursuant to state statute. “Certainly, the possibility that an applicant may join in a complaint against AT&T Missouri is not a basis for finding that granting that applicant a certificate is not in the public interest.” See Order Denying Application to Intervene and Granting a Certificate of Service Authority to Provide Private Payphone Services at 2 (June 5, 2013)

17. Read together, the cases suggested by Grain Belt Express addressing 4 CSR 240-2.075 and the requirement for a showing that the intervenor’s interest is different from that of the general public indicate that, first, the allegation that the intervenor is a “customer,” and, second, that some minor tangential concern, outside the subject matter of the case are insufficient in and of themselves to justify intervention, that is all. And this has been the Commission’s practice. The Commission readily permits intervention for classes of customer groups with a unique status as customer, such as MIEC, AARP and even Consumers Counsel of Missouri. It also permits intervention for public policy organizations expressing certain societal values, such as Sierra Club and Renew Missouri.

18. UFM expressed an interest in this proceeding that is different from that of the general public in that it desires to foster and protect the American free enterprise system in Missouri, including the sanctity of property rights in that economy. This is an interest that is different from the many different public interests that may be adopted by the Commission in this case. No other party is adequate to the task of representing UFM’s interest. The Commission’s order in this case may very well affect this particular interest of UFM.



WHEREFORE, for the foregoing reasons, United for Missouri respectfully renews its request for the Commission to grant its Application to Intervene in this case.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application to Intervene was sent to all parties of record in File No. EA-2014-0207 via electronic transmission this 6th day of May, 2014.

/s/ David C. Linton