

**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 Current)
Transmission Line and an Associated Converter)
Station Providing an Interconnection on the)
Maywood - Montgomery 345 kV Transmission Line.

Case No. EA-2014-0207

STAFF’S REPOSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Public Service Commission of the State of Missouri (“Staff”) and responds to the Commission’s May 12, 2014, *Order Directing Filing* as follows:

1. On the afternoon of May 12, 2014, the Commission ordered Staff to respond by May 15, 2014, to Eastern Missouri Landowners Alliance’s, d/b/a Show Me Concerned Landowners, late morning May 12, 2014, motion requesting the Commission to “set[] a prehearing conference for the purpose of discussing and setting a procedural schedule [before Staff files its recommendation that is currently due by May 30, 2014].

2. In response to Grain Belt Express Clean Line LLC filing its application for a certificate of convenience and necessity on March 26, 2014, the Commission, on March 27, 2014, ordered that notice of the application be given, that applications to intervene be made by April 25, 2014, and, as Show Me Concerned Landowners points out in its motion, that Staff “investigate and file a report and recommendation regarding the application no later than May 30, 2014.

3. Thus far the Commission has allowed Missouri Landowners Alliance; Show Me Concerned Landowners; the International Brotherhood of Electrical Workers

Locals 2, 53 and 1439, AFL-CIO; the Missouri Farm Bureau Federation; David McKnight; Missouri Industrial Energy Consumers; Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; Rockies Express Pipeline LLC; TradeWind Energy, Inc.; Infinity Wind Power; Matthew and Christina Reichert; the Sierra Club; the Missouri Department of Economic Development-Division of Energy; Randall and Roseanne Meyer; Wind on the Wires; and The Wind Coalition to intervene. It has also allowed Energy for Generations, LLC leave to file a brief as *amicus curiae*.

4. On May 2, 2014, both Transource Missouri LLC and United for Missouri, Inc. filed intervention requests, which the Commission granted on May 13th and May 14th, respectively.

5. A plethora of comments have been filed in this case in the Commission's electronic filing and information system, most opposing Grain Belt Express Clean Line LLC's application.

6. Commissioners have filed numerous notices of *ex parte* contacts, many opposing Grain Belt Express Clean Line LLC's application.

7. Section 393.170, RSMo, in full, provides:

1. No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.
2. No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it

has received the required consent of the proper municipal authorities.

3. The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction or such exercise of the right, privilege or franchise is necessary or convenient for the public service. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary. Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

8. The statutes as set out in the Revised Statutes of Missouri are *prima facie* valid and binding; however, the rolls in the office of the secretary of state are the primary and best evidence of legislative intent. *Protection Mutual Insurance Company v. Kansas City*, 504 S.W.2d 127 (Mo. 1974); *Bowen v. Missouri Pacific Railway Company*, 118 Mo. 541, 24 S.W. 436 (1893).

9. The legislative history of § 393.170 is nearly identical to the legislative history of § 148.440 the Court reviewed in 1955 in *Kansas City v. Travelers Insurance Company*, 284 S.W.2d 874 (Mo. App. 1955). There, the Court stated:

In construing this quoted sentence, it is proper and helpful to keep in mind that this section has always been written and published in one continuous paragraph, in all the revisions since 1879 until the Revision of 1949; at which time the Revision Committee divided it into two paragraphs as indicated in the above quotation of said section. It may be conceded that the committee was authorized, by Sec. 3.060, to divide the section into paragraphs, but it could not do so in such a manner as to "alter the sense, meaning, or effect of any legislative act ***." The committee merely compiled and arranged the various statutory enactments. Vol. 3, V.A.M.S., page 206. It had no legislative authority. *Ex parte Hutchens*, 296 Mo. 331, 246 S.W.186.

Furthermore, a section or an Act should not be construed or considered as a new section or new Act by reason of it being inserted in the Revised Statutes. It is simply continued with the same force and meaning as originally enacted. Sec. 1.120 RSMo 1949, V.A.M.S.; *State*

ex rel. Atty. Gen. v. Heidorn, 74 Mo. 410; *Strottman v. St. Louis, I.M. & S. Ry. Co.*, 211 Mo. 227, 109 S.W. 769; *Timson v. Manufacturers Coal & Coke Co.*, 220 Mo. 580, 119 S.W. 565. Consequently, we must construe this section as it appeared in the various revisions from 1919 until 1949, since there were no legislative amendments or changes during that period of time.

Id. at 878.

10. With the exception of the Legislature's addition in 1967 of sewer corporations and their property to the list of utilities¹ and the creation of subsections by the Revisor of Statutes in 1949, what is now § 393.170, was § 72 of Article IV of Senate Bill 1—the Public Service Commission Act²—which bill, when signed by the Governor, became the Public Service Commission Law.³ As originally enacted § 72 was one paragraph,⁴ and but one of 140 sections of the Act.

11. With the 1949 revision to the Missouri statutes the prior practice of renumbering statutes with every decennial revision was abandoned in favor of the decimal system now followed where the number of the statute remains the same with every revision. In that revision, the Revisor of Statutes included the following note to § 386.010 RSMo 1949: "Note: Reference to 'chapter' is taken from RSMo 1939 and includes all of chapter 386, sections 387.010 to 387.350, 389.640, 389.780, 390.020 to 390.170, 391.070, 392.190 to 392.360 and 393.110 to 393.290." Other than

¹ Laws of Missouri 1967, pp. 578-600 (SB 106).

² Laws of Missouri 1913, pp. 556-651.

³ Chapter 95, §§ 10410-10550, RSMo 1919.

⁴ In its December 20, 2005 opinion *StopAquila.Org v. Aquila, Inc.*, 180 S.W.3d 24 (Mo. App. 2005), the Court observed, "Section 393.170 has remained essentially unchanged since it was first adopted in 1913" and that in 1949 the statute was "divided into three distinct subsections." *Id.* at 33.

capitalization and replacement of “act” with “law,” § 386.010 RSMo 1949 is the same as § 1 of the 1913 Public Service Commission Act.

12. The point of the foregoing five paragraphs is that every request for a certificate of convenience and necessity before the Commission pursuant to § 393.170 requires the opportunity for a hearing and, therefore, is a contested case for purposes of Chapter 536, RSMo.

13. This is a contested case with intervenors who are opposing the requested certificate. The Commission has not yet ruled on all requests to intervene. The Commission has not yet held local public hearings, but Staff anticipates that as it did in Case No. EA-2012-0281, the Commission will hold them and Staff would like the benefit of hearing the public at those local public hearings *before* making its recommendation to the Commission. This application raises issues novel to Staff that Staff would like more than the approximately 60 days the Commission has given it to investigate, formulate and present in its recommendation to the Commission on the merits of Grain Belt Express Clean Line LLC’s application.

WHEREFORE, Staff concurs with Eastern Missouri Landowners Alliance’s, d/b/a Show Me Concerned Landowners request that the Commission hold a prehearing conference for purposes of the parties developing a proposed procedural schedule that culminates in an evidentiary hearing, briefing, and a Commission Report and Order regarding a certificate of convenience and necessity for the proposed high voltage direct current transmission line, that the Commission hold local public hearings (with which request Public Counsel and United for Missouri have joined), and, additionally, Staff requests the Commission relieve it of the obligation the Commission imposed upon it to

file by May 30, 2014, Staff's recommendation to the Commission regarding Show Me Concerned Landowners' application. Staff requests the Commission avoid the dates of June 5-11 for setting a prehearing conference, if its schedule permits doing so.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy Staff Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 15th day of May, 2014.

/s/ Nathan Williams