

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)

SHOW ME CONCERNED LANDOWNERS’ COMMENTS IN SUPPORT
MOTION FOR EXPEDITED TREATMENT AND MOTION TO DISMISS
APPLICATION, OR ALTERNATIVELY, TO HOLD CASE IN ABAYANCE

Comes now Show Me Concerned Landowners (“Show Me”), pursuant to 4 CSR 240-2.080(13), and states its support of Missouri Landowner Alliance’s Motion for Expedited Treatment and Motion to Dismiss Application, or Alternatively, to Hold Case in Abeyance (“MLA’s Motion”) as follows:

1. On August 30, 2016, Grain Belt Express Clean Line, LLC (“Grain Belt”) filed its Application for a Certificate of Convenience and Necessity in the above referenced case. At paragraph 75 of its Application, Grain Belt recited that, “All 4 CSR 240-3.105(1)(D) governmental approvals required for the construction and operation of the Project in Missouri will be provided. If they are unavailable when this Application is filed, the Company will furnish such approvals once they have been acquired per 4 CSR 240-3.105(2).”

2. On March 28, 2017, the Western District of the Missouri Court of Appeals issued its Opinion in Case No. WD79883. According to the Opinion, “By statute and by rule, the PSC is authorized to issue a CCN only after the applicant has submitted evidence satisfactory to the PSC that the consent or franchise has been secured by the public utility. Neither statute nor rule

authorizes the PSC to issue a CCN *before* the applicant has obtained the required consent or franchise. (See slip. op., p. 6; emphasis by the Court). The Court made clear that the Applicant must “submit evidence satisfactory to the PSC that the consent or franchise has been secured.”

3. MLA file its Motion on March 28, 2017.

4. Inasmuch as the evidentiary record is now closed, Grain Belt has failed to comply with the requirement that the applicant must “submit evidence satisfactory to the PSC that the consent or franchise has been secured.” Therefore, the Commission must dismiss the Application. It is not as if Grain Belt was unaware of the potential for the Court’s decision. It could have very well attempted to comply with the Commission’s rule. It did not. The Application must be dismissed.

5. While Show Me believes that dismissal is the only appropriate response to Applicant’s failure to carry its burden of proof in this case, it suggests the following conditions in the event the Commission holds the case in abeyance:

- a. The Commission must consider the evidence of the consent or franchise only after due hearing. Inasmuch as it is now clear that franchise assents are a condition of the issuance of a CCN, the Commission must consider the county assents only after due hearing as required by section 393.170.3 RSMo (2000).
- b. Grain Belt Express must provide the status of the approval of all county commission approvals. The status of all relevant county

assents is at issue before the Commission. The Commission must consider them all.

- c. The evidence of county commission approvals must be subjected to rebuttal testimony and cross-examination as is required by a hearing.

6. Show Me agrees with MLA that if the Commission determines to hold this case in abeyance that it be held in abeyance for no more than six months. Therefore, the above conditions, if they are to occur, should occur and a Commission Report and Order should issue no later than the specified six months.

7. Show Me echoes MLA's request that the Commission act on MLA's Motion at its earliest possible convenience. It also requests that the briefing schedule be suspended. Briefing the case under these conditions would subject the landowners to further expense for questionable benefit. Until the issue of the county assents is considered by this Commission after due hearing, there is nothing for the Commission to decide. "Like other administrative agencies, the Commission is not authorized to issue advisory opinions." *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of Mo.*, 392 S.W.3d 24, 38 (Mo. App., 2013).

8. Show Me requests that the Commission seriously consider the interests of the Missouri landowners. The state of Missouri and this Commission are obligated to protect the citizens of the state in their "life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry." Article I, section 2 of the Missouri Constitution. If the Commission holds this case in abeyance, it will be the fourth proceeding the landowners in northern Missouri

will have had to bear in the defense of their land. With the Commission reopening Case No. EA-2014-0207 for further proceedings and the additional process for holding this case in abeyance, the landowners have been subjected to protracted litigation that citizens of this state should not have to bear.

WHEREFORE, Show Me Concerned Landowners requests the Commission accept these comments in support of MLA's Motion.

Respectfully submitted,

By: /s/ David C. Linton

David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdlington@reagan.com

Attorney for Show Me Concerned
Landowners

Filed: March 29, 2017

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 29th day of March, 2017.

/s/ David C. Linton