

**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)	Case No. EA-2016-0358
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)	

**WIND ON THE WIRES’ and THE WIND COALITION’s RESPONSE
to the MISSOURI LANDOWNERS ALLIANCE
MOTION TO DISMISS APPLICATION OR ALTERNATIVELY
TO HOLD CASE IN ABEYANCE**

COMES NOW Wind on the Wires and The Wind Coalition (“Wind Advocates”), by counsel, **responding in opposition** to Missouri Landowners Alliance’s *Motion for Expedited Treatment and Motion To Dismiss Application, or Alternatively, to Hold Case in Abayance*, filed on March 28, 2017. This response is pursuant to the Missouri Public Service Commission’s (Commission) Order issued on March 29, 2017, directing parties to respond to said motion no later than March 31, 2017. In support of this response, Wind on the Wires and The Wind Coalition state the following:

1. In its Motion, Missouri Landowners Alliance (MLA) asks the Commission to dismiss Grain Belt Express’s application in this case, or in the alternative hold the case in abeyance for six months to allow Grain Belt to obtain assents pursuant to section 229.100 RSMo. from counties in which the Grain Belt transmission line

crosses. (*MLA Motion* at 3 and 5-6). MLA argues, relying on a recent opinion issued by the Missouri Court of Appeals, this case should be dismissed because Grain Belt failed to provide evidence of county assents before the record closed.

2. **The Commission should deny MLA's motion to dismiss** the Application because the appellate decision it relies upon is irrelevant and not yet binding on the Commission. To the extent the Commission holds the appellate decision relied upon by MLA is relevant to this case, the Commission should grant Grain Belt Express a reasonable period of time to secure the county assents.
3. On March 28, 2017 the Western District Court of Appeals issued an opinion regarding the need for county commission assents pursuant to section 229.100 RSMo. and 4 CSR 240-3.105(1)(D)(1) before the Commission grants a certificate of convenience and necessity (CCN). *MLA Motion*, at 7 and 10-11 (*Neighbors United Against Ameren's Powerline v. Public Service Commission* (WD798839)). The *Neighbors United* opinion states that section 393.170.2 RSMo. requires a county commission assent be submitted to the Commission before a CCN be granted. *Id.* at 14.
4. The *Neighbors United* case is irrelevant to this Application. That appellate opinion is based on an application of section 393.170.2 RSMo, whereas Grain Belt Express's application for a CCN was filed under section 393.170.1 RSMo. (*Application of Grain Belt Express Clean Line LLC for a Certificate of Convenience and Necessity*, at 1 (Aug. 30, 2016); Item #34). The *Neighbors United* court held that the specific language of section 393.170.2 is what requires the need for county assents prior to issuance of a CCN. Because Grain Belt Express's Application for a CCN is brought under a different provision than the

one relied upon by the court of appeals, the appellate decision does not apply to this matter. Moreover, section 393.170.1 does not include language requiring an applicant receive “required consents of the proper municipal authorities,” which is what the court of appeals found to be binding in section 393.170.2.

5. Moreover, the appellate opinion is not yet final, thus it is not binding upon the Commission. An appellate decision is not considered final until the mandate is issued. *Meierer v. Meierer*, 876 S.W.2d 36, 37 (Mo. App. 1994). A mandate is not issued until after all possible avenues for further appellate review have been exhausted. *Philmon v. Baum*, 865 S.W.2d 771, 774-75 (Mo. App. 1993). A decision of the court of appeals, during the time transfer is pending and until transfer is denied is not final. *Id.* Parties have multiple opportunities to transfer the case to the Supreme Court of Missouri and that period may take up to a month for resolution. (MO S.Crt. Rules 83.02 and 83.04).

WHEREFORE, Wind on the Wires and The Wind Coalition request that the Commission deny MLA’s motion to dismiss, or to the extent the Commission holds the *Neighbors United* decision relied upon by MLA is relevant to the instant case, the Commission should grant Grain Belt Express a reasonable period of time to obtain county assents or comply with Missouri law related to county assents.

Respectfully submitted,

/s/ Sean R. Brady

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CERTIFICATE OF SERVICE

The undersigned certifies that this Response to Motion to Strike was electronically served upon all parties to this case on March 31, 2017.

/s/ Sean R. Brady

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The Wind Coalition*