

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day of
February, 2017.

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,) **File No. EA-2016-0358**
Control, Manage and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood -)
Montgomery 345kV Transmission Line)

**ORDER DENYING MOTIONS TO STRIKE TESTIMONY OR DELAY
PROCEDURAL SCHEDULE**

Issue Date: February 16, 2017

Effective Date: February 16, 2017

On October 19, 2016, the Missouri Public Service Commission (“Commission”) issued an *Order Setting Procedural Schedule and Other Procedural Requirements*, directing the filing of rebuttal testimony on January 24, 2017 and surrebuttal testimony on February 21, 2017. On January 24, the Commission received rebuttal testimony from Duncan Kincheloe and John Grotzinger on behalf of the Missouri Joint Municipal Utility Commission (“MJMEUC”), Matt Langley on behalf of Infinity Wind Power (“Infinity”), and Michael Goggin on behalf of Wind on the Wires and the Wind Coalition (“Wind Advocates”).

On January 27 and 30, 2017, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, joined by the Missouri Landowners Alliance (collectively, “Landowners”), filed motions to strike the rebuttal testimony of witnesses Kincheloe, Grotzinger, Langley, and Goggin, or in the alternative, delay the deadline for filing surrebuttal testimony and the remainder of the procedural schedule by four months

(collectively, “Motions”). Grain Belt Express Clean Line LLC (“Grain Belt”), MJMEUC, Infinity and Wind Advocates all oppose the Motions.

Landowners allege that the rebuttal testimony of those four witnesses should be struck because it violates Commission Rule 4 CSR 240-2.130(7)(C), in that the testimony is supportive of the Grain Belt application and does not reject, disagree, or propose an alternative to the Grain Belt direct case. Landowners argue that all four rebuttal testimonies are improper rebuttal and should have been filed as direct testimony. Landowners allege that by filing the testimony as rebuttal, Grain Belt, MJMEUC, Infinity, and Wind Advocates are attempting to prevent Landowners from having an adequate opportunity to evaluate and respond to the testimony, including a MJMEUC power purchase agreement. Due to their limited resources, Landowners request in the alternative that the Commission delay the procedural schedule for an additional four months to provide Landowners additional time to review the testimony.

Commission Rule 4 CSR 240-2.130(7)(C) states, in part, as follows:

For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case;

Landowners argue that only testimony that rejects, disagrees or proposes an alternative to a party’s direct case may be filed as rebuttal under this rule. The Commission finds that Landowners’ suggested interpretation of the rule is overly restrictive and conflicts with both the actual rule language and intent of the rule. Landowners would have the Commission interpret the words “shall include” as meaning “is limited to”. The Commission rejects this interpretation and concludes that the rule does not prohibit or prevent a party from stating in

rebuttal testimony why it supports or otherwise agrees with any direct testimony. This interpretation is supported by subsection (D) of the same rule, which states that surrebuttal testimony “shall be limited to” material responsive to matters raised in rebuttal testimony. Landowners’ proposed interpretation would require the Commission to improperly ignore these distinct differences in the wording of subsections (C) and (D). Testimony about why a party rejects, disagrees or proposes an alternative to direct testimony is required to be included in rebuttal in order to prevent surprise at the hearing and provide an opportunity for parties to fully explain disputed issues for the Commission. The Commission concludes that the rebuttal testimony of witnesses Kincheloe, Grotzinger, Langley, and Goggin was properly filed in compliance with Commission rules.

As an alternative position, Landowners request an extension of the procedural schedule for four months to further evaluate rebuttal testimony. Landowners have had more than three months to conduct discovery since the Commission issued an order setting a procedural schedule, to which Landowners did not object or request reconsideration. From the date for filing of rebuttal testimony, Landowners had approximately one month until the deadline for surrebuttal and two months until the evidentiary hearing in order to conduct additional discovery. The Commission concludes that the filing of testimony under the procedural schedule of this case does not unduly prejudice Landowners, and their request for a four month extension of time is not reasonable.

THE COMMISSION ORDERS THAT:

1. Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners and Missouri Landowners Alliance’s motions to strike rebuttal testimony or, in

the alternative, delay the procedural schedule filed on January 27 and 30, 2017, are denied.

2. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, slightly slanted style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

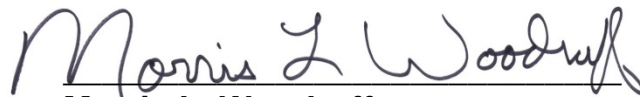
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 16th day of February 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

February 16, 2017

File/Case No. EA-2016-0358

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style with a large initial 'M' and a distinct 'L'.

**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.