

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of May, 2014.

Missouri Landowners Alliance,)
)
 Complainant,)
)
 v.)
)
 Grain Belt Express Clean Line LLC,)
 Grain Belt Express Holding LLC,)
 Clean Line Energy Partners LLC,)
)
 Respondents.)

File No. EC-2014-0251

ORDER GRANTING MOTION TO DISMISS

Issue Date: May 21, 2014

Effective Date: June 20, 2014

Syllabus: This order dismisses the above-styled complaint.

Procedural History

On March 11¹, Missouri Landowners Alliance (“MLA”) filed the above-styled complaint. The complaint is that Respondents have violated and continue to violate Commission Rules 4 CSR 240-4.020(12) and (14) (“the rules”).

The rules are part of the Commission’s rules regarding ex parte and extra-record communications.² Among other things, MLA asks the Commission to order Respondents to revise their websites.

¹ Calendar dates refer to 2014 unless otherwise noted.

² Commission Rules 4 CSR 240-4.020.

MLA does **not** allege that Respondents have had any prohibited communication with the Commission. However, MLA opines that the rules go beyond ex parte communication with the Commission. MLA states that Respondents violate the rules by maintaining websites and publishing materials in support of their goal of building transmission facilities across northern Missouri.

A summary of the rules is as follows: Subsection 12 states that it is improper for anyone to try to sway the Commission's judgment outside the hearing process. And subsection 14(F) states that an attorney shall not make a statement that a reasonable person would expect would be publicly disseminated outside the hearing process regarding the substance of a pending case.

Respondents answered on April 11, and filed a motion to dismiss on April 14. Complainant responded on April 15. The Staff of the Commission responded as ordered on April 28, stating that the Commission should dismiss the complaint.

Decision

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.³ The Commission has no authority to declare or enforce any principle of law or equity.⁴ Likewise, the Commission also cannot grant equitable relief.⁵

³ See, e.g., State ex. rel. City of St. Louis v. Missouri Public Service Comm'n, 73 S.W.2d 393, 399 (Mo. banc 1934); State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n, 406 S.W.2d 5, 8 (Mo. 1966).

⁴ See, e.g., Straube v. Bowling Green Gas Co., 227 S.W.2d 666,668-669 (Mo. 1950).

⁵ See, e.g., State ex. rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n, 116 S.W.3d 680, 695 (Mo. App. 2003); American Petroleum Exchange v. Public Service Comm'n, 172 S.W.2d 952, 955 (Mo. 1943).

Because the Commission's powers are limited to what the legislature confers upon the Commission, the Commission must review the enabling statute.⁶ That statute limits communications between the Commission and those outside the Commission regarding cases pending before the Commission.

The statute allows communications regarding a pending case if the communication is done at a public meeting, such as the Commission's regular Agenda meetings. It also lists steps parties must follow to notify other parties should they engage in communication with the Commission regarding the substance of a pending case when such communication is not made in a public forum.

Every subsection of § 386.210 RSMo pertains to communications **involving the Commission**. The statute does **not** limit communications **not involving the Commission**.

With this statutory limitation in mind, the Commission can and will interpret the rules.⁷ The primary purpose of rule construction is to ascertain the intent of the rule.⁸ The preamble of the rule states its purpose is:

To set forth the standards to promote the public trust in the commission with regard to pending filings and cases. This rule regulates communication between the commission, technical advisory staff, and presiding officers, and anticipated parties, parties, agents of parties, and interested persons regarding substantive issues that are not part of the evidentiary record (emphasis supplied).

Upon analysis of the Commission's limited authority, the rules' enabling statute, and the preamble of the rules, the Commission concludes that the rules do not forbid the websites and publications about which MLA complains. Subsection (15) of the ex parte

⁶ Section 386.210 RSMo.

⁷ See, e.g., State ex. rel. Hoffman v. Public Service Comm'n, 530 S.W.2d 434, 439 (Mo.App. 1975), *rev'd on other grounds*, 550 S.W.2d 875 (Mo.App. 1977).

⁸ See State ex. rel. Competitive Telecommunications v. Public Service Comm'n, 886 S.W.2d 34, 39 (Mo.App. W.D. 1994).

rule provides for potential remedies for failing to obey the Commission's ex parte rules.⁹ Tellingly, the Commission listed no remedy for a violation of subsection (12). Thus, subsection (12) of the rule is directory, not mandatory.¹⁰ Indeed, the word shall is found in virtually every subsection of Commission Rule 4 CSR 240-4.020 **except** subsection (12). In other words, not only does subsection (15) not give a remedy for a violation of subsection (12), subsection (12) does not even forbid any certain behavior; classifying an action as improper is not equal to prohibiting that action.

Subsection (14) of the rules specifically requires **attorney** misconduct. MLA, with no supporting legal authority, simply states that subsection (14) applies also to non-attorneys.¹¹ The remedies for violations of subsection (14) are specifically limited to attorneys.¹² Accordingly, subsection (14) applies only to attorneys.

Although the Commission's power is limited by statute, should the Commission have the power to do what MLA requests, the Commission would have grave concerns about restricting speech protected by The First Amendment of the United States Constitution and Article 1 of the Constitution of The State of Missouri.¹³ Respondents and Staff have briefed those constitutional issues admirably, and the Commission will not belabor the point with further discussion on it. And, finally, should it have the power to do what MLA requests, the Commission doubts the equity of ordering Respondent to edit its website when MLA itself apparently maintains its own website criticizing the proposed Grain Belt project across

⁹ Commission Rule 4 CSR 240-4.020(15)(allowing the Commission to issue an order to show cause for violations of subsections (3), (4), (5), (8), or (11) .

¹⁰ See, e.g., *State v. Tisius*, 92 S.W.2d 751, 770 (Mo. banc 2002)(stating that where a statute or rule does not state what results will follow in the event of a failure to comply with its terms, the rule or statute is directory and not mandatory.)

¹¹ See Formal Complaint, p. 3 (filed March 11, 2014)(claiming that subsection 14(F) states that the attorney, and thus in effect the parties to the case, have certain obligations).

¹² See *id.* at fn. 9.

¹³ See, e.g., *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 571-72 (in which the Court struck down the New York Public Service Commission's ban on utility advertising due to the ban violating The First and Fourteenth Amendments).

northern Missouri. Respondents allege MLA's publishes such a website, and MLA, to date, has yet to deny the accusation.¹⁴

The Commission will dismiss the complaint.

THE COMMISSION ORDERS THAT:

1. The complaint is dismissed with prejudice.
2. The Data Center shall designate the complaint as public.
3. This order shall become effective on June 20, 2014.
4. This file shall be closed on June 21, 2014.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge

¹⁴ See, e.g., *McAlister v. Strohmeier*, 395 S.W.2d 546, 554 (Mo.App. W.D. 2013)(stating that a litigant with unclean hands generally is not entitled to equitable relief such as an injunction.) See Respondent's Motion to Dismiss, p. 4 (filed April 14, 2014)(directing the reader to what appears to be MLA's website in opposition of Grain Belt's proposed project, found by pointing a web browser to <http://missourilandownersalliance.org/>).