

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,) **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 345 kV Transmission Line)

ORDER REGARDING MOTIONS

Issue Date: November 30, 2018

Effective Date: November 30, 2018

On November 16, 2018, the Missouri Landowners Alliance (“MLA”) filed a Motion to Strike Notice Regarding Supplemental Testimony from Clean Grid Alliance and the Wind Coalition (“MLA motion #1”). On that same day, Clean Grid Alliance and the Wind Coalition filed a Motion for Leave to File out of Time and Instantly an Affidavit in Support of Notice (“Clean Grid motion”). On November 19, 2018, MLA filed a Motion to Strike Affidavit of Michael Goggin in Support of Notice Regarding Supplemental Testimony on Behalf of Clean Grid Alliance and the Wind Coalition (“MLA motion #2”).

MLA motions #1 and #2

MLA has requested that the Commission strike the notice stating that the Clean Grid Alliance and the Wind Coalition do not intend to file supplemental direct testimony in this remand proceeding (motion #1) and the affidavit of Michael Goggin in support of that notice (motion #2). MLA argues that the notice and affidavit have improperly been submitted as evidence into the record of the hearing without providing MLA and other parties an opportunity to cross-examine the affiant.

First, MLA has not properly characterized the status of the notice and affidavit, and its concerns in this respect are premature. The Clean Grid Alliance and the Wind Coalition's notice and affidavit submitted in EFIS as a pleading are not now part of the evidentiary record of this proceeding. The notice and affidavit are currently contained in the case file, not the evidentiary record. For the notice and affidavit to be included in the evidentiary record, the Commission must first admit any offered evidence at an evidentiary hearing, or otherwise by order, into the record of the hearing after parties have an opportunity to object to the admission of that evidence. If the notice and affidavit were to be offered into evidence at a future hearing, MLA would have the opportunity to object at that time.

In the notice, counsel for the Clean Grid Alliance and the Wind Coalition state that witness Michael Goggin has reviewed his testimony and concluded that there are no new material facts that would require changing the positions in that testimony. Counsel then include a brief summary of the unchanged positions of those two parties. The notice filed by the Clean Grid Alliance and the Wind Coalition was a pleading and complied with 4 CSR 240-2.080(1) and (17) because it was signed by an attorney of record and contained a certificate of service. Since the inclusion of the notice in the EFIS case file is appropriate as a statement of counsel and does not prejudice MLA, MLA's motion #1 will be denied.

With regard to the affidavit of Michael Goggin in support of the notice, counsel for the Clean Grid Alliance and the Wind Coalition argue that the notice and affidavit are informational filings only and are not intended to be evidence in support of its case. In his affidavit, Mr. Goggin does state that he has found no material changes of facts discussed in his previous testimony. However, Mr. Goggin goes on to allege a number of new facts that "support the positions stated in my Rebuttal testimony and strengthen the case for the need

for the Grain Belt Express line”. Despite the representations of counsel that the affidavit is not testimony, the statements of Mr. Goggin in the affidavit appear to be additional testimony, although not currently part of the record, designed to influence the Commission in its decision. If the affidavit was intended to inform the Commission of new material facts, it should have been filed as supplemental direct testimony as ordered by the Commission. If it was not so intended, it was unnecessary¹ and should not have included the additional fact statements. Either way, the Commission concludes that the affidavit is improper and should be struck, so the Commission will grant the MLA motion #2.

Clean Grid motion

The Clean Grid motion requests that the Commission permit the filing out of time of the affidavit by witness Michael Goggin in support of its notice stating that the Clean Grid Alliance and the Wind Coalition do not intend on filing supplemental direct testimony in this remand proceeding. As a result of the Commission’s decision to grant MLA motion #2, the Commission will deny the request for leave to file the affidavit of Michael Goggin out of time as moot.

THE COMMISSION ORDERS THAT:

1. The Missouri Landowners Alliance’s Motion to Strike Notice Regarding Supplemental Testimony from Clean Grid Alliance and the Wind Coalition, filed on November 16, 2018, is denied.

¹ Under the Commission’s procedural rules at 4 CSR 240-2, pleadings are not required to be verified by affidavit, but pre-filed testimony is required to be accompanied by an affidavit providing the witnesses’ oath. See, 4 CSR 240-2.130(8).

2. The Missouri Landowners Alliance's Motion to Strike Affidavit of Michael Goggin in Support of Notice Regarding Supplemental Testimony on Behalf of Clean Grid Alliance and the Wind Coalition, filed on November 19, 2018, is granted.

3. Clean Grid Alliance and the Wind Coalition's Motion for Leave to File out of Time and Instantly an Affidavit in Support of Notice, filed on November 16, 2018, is denied.

4. This order shall become effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 30th day of November, 2018.

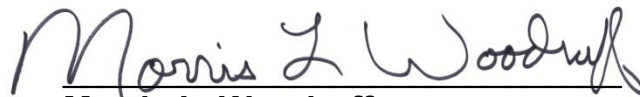
STATE OF MISSOURI

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 30th day of November 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 30, 2018

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, prominent "M" and "W".

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.