

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Missouri Landowners Alliance,)	
)	
Complainant,)	
)	
v.)	Case No. EC-2014-0251
)	
Grain Belt Express Clean Line LLC,)	
Grain Belt Express Holding LLC, and)	
Clean Line Energy Partners LLC,)	
)	
Respondents.)	

ANSWER AND AFFIRMATIVE DEFENSES

Respondents Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”), Grain Belt Express Holding LLC, and Clean Line Energy Partners LLC (“Clean Line”) (collectively, the “Respondents”), pursuant to Missouri Public Service Commission (“Commission” or “PSC”) Rule 4 CSR 240-2.070(9) and the Commission’s March 12, 2014 Notice of Complaint and Order Establishing Time to Respond, submit this Answer and Affirmative Defenses to the Formal Complaint (“Complaint”) filed by Missouri Landowners Alliance (“MLA” or “Complainant”).

In support of their Answer and Affirmative Defenses, Respondents state:

Introduction

The Complaint asks this Commission to censor the public websites of Grain Belt Express and Clean Line, as well as their publications regarding the high voltage, direct current (“HVDC”) transmission line proposal for which the Company is seeking a certificate of convenience and necessity (“CCN”) in Missouri. See Application, Case No. EA-2014-0207 (filed Mar. 26, 2014) (“CCN Case”).

As defined in the Application, the Grain Belt Express Clean Line Project (“Grain Belt Express Project” or “Project”) is an approximately 750-mile, HVDC transmission line and associated facilities that will deliver up to 500 megawatts (“MW”) of low-cost, wind-generated power from western Kansas into Missouri, and up to 3,500 MW to load and population centers in Illinois, Indiana and states farther east.

Complainant alleges that Respondents have violated and continue to violate two provisions of the Commission’s rules governing ex parte communications, Sections (12) and (14) of 4 CSR 240-4.020 (“Ex Parte Rules” or “Rules”).

MLA admits that Respondents did not engage “in any prohibited, direct ex parte communication with any Commissioner, or any member of its staff.” See Compl. at ¶ 3, p. 2. However, it alleges that Respondents have violated the Ex Parte Rules indirectly by operating and maintaining public websites (Compl. Ex. 1-2, 4-5, 12, 14-17, 21-22, 24-25, 28-30), by commissioning an economic study they have posted to the Company’s website (Compl. Ex. 3), and by publishing announcements in newspapers about meetings regarding the Project (Compl. Ex. 6).

Furthermore, MLA protests and objects to media coverage of the Project and its being discussed in newspaper articles and press releases (Compl. Ex. 7-8, 10-11, and 13). MLA has no objection to publicity that is adverse to the Project (Compl. Ex. 31), and appears to praise a page from Ameren’s website on the economic benefits of its resource plan (Compl. Ex. 20).

MLA also complains about Respondents’ media releases (Compl. Ex. 9) and a brochure for a conference held in Texas that was sponsored by an industry organization on transmission siting which Respondents did not sponsor (Compl. Ex. 18-19). See Compl. at ¶¶ 4-6.

Although MLA fails to set forth these allegations in a clear and concise manner, as required by 4 CSR 240-2.070(4)(D), it appears that MLA claims that Respondents are violating the Ex Parte Rules because their websites and publications may expose the Commissioners, their staff, and non-PSC public officials to information that is circulated outside of the Company's CCN proceeding before the Commission. See Compl. at ¶ 4.

Among other things, MLA asks the Commission to exercise the censor's blue pencil and order Respondents to revise two websites to conform to MLA's view of the Ex Parte Rules. MLA also asks that the Commission strike from the record any letters of support that Grain Belt Express has filed in the CCN Case, even though such a filing is clearly a permissible act.

Apart from the troubling constitutional and freedom of expression issues that MLA's claims raise, it is clear that the Ex Parte Rules do not apply to this situation. First, ex parte communications prohibited by the Rules are only those prohibited communications "between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any party or anticipated party, or the agent or representative of a party or anticipated party." See 4 CSR 240-4.020(1)(G). Any communications between Respondents and county or municipal officials are not prohibited by the Rules. And MLA has already admitted in Paragraph 3 of the Complaint that Respondents did not engage in any prohibited, direct ex parte communication with any Commissioners or member of a Commissioner's staff.

Moreover, prohibited ex parte communications "shall not include a communication regarding general regulatory policy allowed under section 386.210.4, RSMo, communications listed in section (3) of this rule, or communications that are de minimis or immaterial." See 4 CSR 240-4.020(1)(G). Section 386.210.4 encourages "the free exchange of ideas, views, and

information between any person and the commission or any commissioner” and allows the Commission to confer with members of the public or any public utility regarding substantive matters that are the subject of a pending case in which no evidentiary hearing has been scheduled, provided that the communication is made in a public forum in which parties to the case are present. See Section 386.201.3-4. If MLA considers the Commission to be sufficiently present in public forums where websites are viewed and news publications are read, then other parties to the case are similarly present such that the communication is not prohibited by the Rules or Missouri law.

With regard to the Ex Parte Rules that MLA alleges were specifically violated, Subsection (12) prohibits attempts “to sway the judgment of the commission” by any person interested in a case who “bring[s] pressure or influence to bear upon the commission” See 4 CSR 240-4.020(12). Maintaining fully transparent, public websites regarding the benefits of a proposed project, posting an economic study on a proposed project, and being named in news and other publications regarding transmission issues will hardly “sway the judgment of the commission” through improper “pressure or influence.”

Public discussion of a proposed project on websites and in news and other publications is not prohibited by 4 CSR 240-4.020(12). This Rule and the law in general afford ample opportunity for everyone to participate in open public discourse on the internet and through other social media networks. Indeed, MLA maintains its own public website that promotes opposition to the Project.¹

Subsection (14) requires that an attorney or law firm appearing before the Commission make “reasonable efforts to ensure that the attorney and any person whom the attorney represents avoid initiating, participating in, or undertaking an ex parte communication prohibited by section

¹ See <http://missourilandownersalliance.org/> (last visited Apr. 7, 2014).

(3) or a communication prohibited by section (11).” All of the statements that MLA alleges are improper occurred in a public forum. There is no allegation that any statement was made by an attorney or law firm representing Respondents. 4 CSR 240-4.020(14) does not apply to the publications of which Complainant complains.

Not only is public debate in the form of websites and other publicly available materials not a violation of the Commission’s Ex Parte Rules, but any Commission order that limits or restricts public websites as Complainant requests would be an unconstitutional infringement of Respondents’ freedom of expression and a prohibited prior restraint of the right of free speech.

MLA requests that the Commission prohibit Respondents from publicizing its position regarding the Project on websites. This is clearly a matter of public concern entitled to First Amendment protection given that the Project is subject to the Commission’s approval. The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open” New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). Accordingly, “speech on public issues occupies the highest rung on the hierarchy of First Amendment values, and is entitled to special protection.” Connick v. Myers, 461 U.S. 138, 145 (1983). The Supreme Court of the United States has warned that its principles must be followed “to ensure that courts themselves do not become inadvertent censors.” See Snyder v. Phelps, ___ U.S. ___, 131 S. Ct. 1207, 1216 (2011).

A “prior restraint” is an administrative or judicial order that forbids a communication issued in advance of the time that it is to occur. Alexander v. United States, 509 U.S. 544, 550 (1993). “Governmental action constitutes a prior restraint when it is directed to suppressing speech because of its content before the speech is communicated. This may take the form of orders prohibiting the publication or broadcast of specific information ... or systems of

administrative preclearance that give public authorities the power to bar the publication or presentation of material” In re G. & A. Books, Inc., 770 F.2d 288, 296 (2d Cir. 1985).

The Supreme Court of the United States has repeatedly recognized that prior restraints are “the most serious and least tolerable infringement on First Amendment rights” and are “presumptively unconstitutional.” Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 558-59 (1976). Accordingly, the Supreme Court has consistently invalidated prior restraints, no matter the context. See CBS Inc. v. Davis, 510 U.S. 1315, 1317-18 (1994) (Blackmun, Cir. Justice) (finding temporary injunction against broadcast unconstitutional despite allegations that broadcast would be defamatory and cause economic harm).

Courts routinely deny requests to limit speech through a website as MLA seeks to do here. In Payne v. Goodyear Tire & Rubber Co., 207 F.R.D. 16, 20 (D. Mass. 2002), the Court rejected plaintiffs’ challenge to statements on a manufacturer’s website concerning floor heating systems regarding potential class members. Cf. Central Hudson Gas & Electric Corp. v. Public Serv. Comm’n, 447 U.S. 557, 571-72 (1980) (striking down New York PSC’s ban on promotional advertising which suppressed speech under the First and Fourteenth Amendments).

The Complaint also violates Section 8 of Article I of the Missouri Constitution’s Bill of Rights which states: “That no law shall be passed impairing the freedom of speech, no matter by what means communicated” and “that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject” See State v. Wooden, 388 S.W.3d 522, 525-26 (Mo. 2013) (“ability to criticize the government and public officials are undeniably privileges that are afforded to all citizens under the First Amendment and Missouri’s correlative provision”).

Respondents' operation and maintenance of websites concerning the Project, as well as news and other publications that discuss the Project or the benefits of a transmission line that will deliver wind-generated electricity do not violate the Commission's Ex Parte Rules. Any prohibition on these public discussions of the Project would violate Respondents' federal and Missouri rights to freedom of expression and be an unconstitutional prior restraint. Accordingly, the Complaint should be dismissed.

Answer

Except as specifically admitted herein, Respondents deny each and every allegation, averment, and statement in the Complaint, and specifically deny that they violated the Commission's Rules as alleged in the Complaint.

1. Respondents are without sufficient information to enable them to admit or deny the description of Complainant in Paragraph 1 of the Complaint and so deny such description upon that ground. Respondents admit that on January 13, 2014 Grain Belt Express filed a notice of intended case filing in what was docketed as No. EA-2014-0207, and that Grain Belt Express is a wholly-owned subsidiary of Grain Belt Express Holding LLC, which is a wholly owned subsidiary of Clean Line. Respondents deny all remaining allegations in Paragraph 1 of the Complaint not specifically admitted herein.

2. To the extent the allegations in Paragraph 2 of the Complaint refer to the Company's Application in No. EA-2014-0207, Respondents state that the Application speaks for itself and refer MLA to the Application. Respondents are without sufficient information to enable them to admit or deny whether Complainant will intervene or be permitted to intervene in No. EA-2014-0207, and so deny such allegation upon that ground. Respondents deny all remaining allegations in Paragraph 2 of the Complaint not specifically admitted herein.

3. Respondents admit that they have not engaged in any prohibited, direct ex parte communication with any Commissioner or any member of its staff. The remaining allegations in Paragraph 3 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 3 not specifically admitted herein.

4. The allegations in Paragraph 4 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 4.

5. To the extent the allegations in Paragraph 5 of the Complaint refer to the Company's Application in No. EA-2014-0207, Respondents state that the Application speaks for itself and refer MLA to the Application. The remaining allegations in Paragraph 5 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 5 not specifically admitted herein.

6. The allegations in Paragraph 6 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 6.

7. To the extent the allegations in Paragraph 7 of the Complaint selectively quote, interpret, or construe Respondents' filings with the Federal Energy Regulatory Commission, Respondents state that such filings speak for themselves and refer MLA to those filings. The remaining allegations in Paragraph 7 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 7 not specifically admitted herein.

8. The allegations in Paragraph 8 of the Complaint constitute legal arguments and conclusions to which no response is required. To the extent a response is required, Respondents deny all allegations contained in Paragraph 8.

9. Paragraph 9 of the Complaint constitutes a prayer for relief to which no response is required. To the extent a response is required, Respondents deny all allegations and the prayer contained in Paragraph 9.

Affirmative Defenses

10. Respondents deny each and every allegation contained in the Complaint, unless specifically admitted herein, and incorporate by reference each and every answer set forth above in response to Complainant's allegations in Paragraphs 1 through 9.

11. The Complaint fails to set forth facts showing that MLA is entitled to the relief prayed for and fails to state a claim upon which relief may be granted against Respondents. The Complaint should, therefore, be dismissed.

12. Paragraphs 3-8 set forth no claim for relief and constitute only legal arguments and conclusions, and should be dismissed.

13. Complainant's claims for relief are barred by Amendment I to the United States Constitution and Article I, Section 8 of the Missouri Constitution, as well as the judicial doctrine forbidding prior restraint of freedom of speech and expression.

14. Complainant's claims for relief are barred by the doctrines of waiver and estoppel, as MLA maintains at least one website opposing the Project and its efforts have been covered in the media and in news publications.

WHEREFORE, Respondents ask that the Complaint be dismissed in its entirety as it states no claim for relief, and that Respondents be awarded their costs and any further relief found appropriate by the Commission.

Respectfully submitted,

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and Affirmative Defenses and Motion for Determination on the Pleadings was served upon the parties to this Complaint by email or U.S. Mail, postage prepaid, this 11th day of April, 2014.

/s/ Karl Zobrist

Attorney for Respondents