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, 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	)	Case No. EA-2016-0358

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MOTION TO DISMISS APPLICATION

Comes Now the Missouri Landowners Alliance (MLA), pursuant to Rule 4 CSR 240-2.116(4), and respectfully requests that the Commission dismiss the Application filed in this case on June 30, 2016 by Grain Belt Express Clean Line LLC (Grain Belt). In support of this Motion, the MLA states as follows.

1. The MLA is a non-profit, grass-roots Missouri corporation which was organized to oppose the construction of the high-voltage electric transmission line which Grain Belt is seeking to build across northern Missouri. The MLA consists of over 800 members, most of whom live in the area where Grain Belt is proposing to build the line. The MLA intervened and participated in Commission Case EA-2014-0207, in which the Commission rejected Grain Belt's earlier application to build essentially the same line which is the subject of this proceeding.

2. The MLA is seeking dismissal of the Application in this case because Grain Belt failed to provide the Commission and other interested parties with the 60 day

advance notice required by Commission rule 4 CSR 240-4.020(2). That rule provides in part as follows:

> Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission.

3. In its first CCN case, No. EA-2014-0207, Grain Belt duly filed the Notice of its intent to file its Application, citing the same Commission rule relied on here by the MLA. That Notice was filed with the Commission on January 13, 2014, just over 60 days before the Application was filed on March 26, 2014.[1]

4. In this latest Application, Grain Belt did not seek a waiver of the Notice requirement, and in fact makes no mention at all of that provision. Absent any explanation from Grain Belt, it would seem they have now decided that the Notice is unnecessary because it applies to "regulated entities". If that is their contention, the MLA would respectfully suggest that by their own choosing, Grain Belt has already become a regulated utility under Missouri law.

5. Section 386.020(43) RSMo specifically states that every "public utility" is "subject to the jurisdiction, control and regulation of the commission …." As defined there, a "public utility" includes an "electrical corporation." So if Grain Belt is now an electrical corporation, then it is clearly a "regulated entity" under the terms of the Commission's Notice requirement.

6. Under subsection (15) of Section 386.020, an electrical corporation is defined to include any entity which owns, operates, controls or manages any "electric plant." And under subsection (14) of that same statute, "electric plant" is defined to include "all

[1] Case No. EA-2014-0207, EFIS No. 1

real estate…. used *or to be used* for or in connection with or to facilitate" the generation or transmission of electricity. (Emphasis added)

7. Grain Belt has purchased two forms of interest in real estate which it plans to use "in connection with or to facilitate" its proposed transmission line in the state of Missouri. **

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Second, in the earlier case Grain Belt told the Commission that it had purchased easement agreements on 45 tracts of property where the line was to be constructed.[2]

The MLA contends that either or both of these transactions gives Grain Belt a legal interest in "electric plant", i.e. real estate, which thus makes it a "regulated entity" under the terms of the Missouri statutes cited above. If it appears to be counter-intuitive that Grain Belt is already a regulated utility in Missouri, it is only because the controlling statues make it so.

8. Significantly, **

NP ** Thus they must have felt at the time that this particular interest in Missouri real estate (or perhaps some

[2] See Grain Belt's "Response to Order Directing Filing of Additional Information", p. 2, filed April 13, 2015 in Case No. EA-2014-0207.

other interest) was enough to make it a "regulated entity" subject to the Notice provision of the Commission's rules. And notably as well, the Notice was filed in that case on behalf of Grain Belt by the Brydon, Swearengen law firm, an experienced and respected law firm which practices regularly before this Commission.

9. Ameren, as well, clearly agrees with the MLA's position. In Case No. EA-2015-0146, Ameren Transmission Company (ATXI) sought a CCN for a 100 mile transmission line in northern Missouri. Like Grain Belt, ATXI is not rate regulated by this Commission, and had no existing lines within the state. In fact, ATXI claimed that because it would serve no retail customers in Missouri, the Commission had no jurisdiction over its proposed transmission line.[3]

Nevertheless, ATXI filed its Notice, pursuant to Commission Rule 4 CSR 240-4.020(2).[4] While AXTI first argued that the Commission had no jurisdiction over its proposed line (for the reasons stated above), once it got beyond that issue it correctly concluded as follows: "Since a hearing is required …., if the Commission were to assert jurisdiction this would be a contested case and the Commission's rules would contemplate this notice."[5] Accordingly, AXTI filed the required Notice, more than 5 months before filing its Application.

10. Given these recent interpretations of the Notice rule, including the precedent set by Grain Belt itself, the MLA has assumed that Grain Belt would again provide Notice to the Commission and the public at least sixty days before it filed its latest Application. Accordingly, the MLA was relying on that sixty day period to organize its efforts for this second round of proceedings on the Grain Belt line. In particular, it is just

[3] Application, p. 1, EFIS No. 2., EA-2015-0146.
[4] Notice, EFIS No. 1, id.
[5] Id., p. 2.

beginning the process of raising the funds which will be needed to secure the assistance of outside consultants, and is not yet in a position to even know how much money it may have available for that critical aspect of this case. Counsel for the MLA is recovering only out-of-pocket expenses, but the cost of consultants and other litigation expenses will far exceed the funds which the MLA now has available. To allow Grain Belt to file its Application without any advance notice will seriously hamper the ability of the MLA to effectively participate in this case. Presumably, this is one of the very problems which the Notice rule was intended to rectify.

11. Filing the Notice would not have delayed the filing of Grain Belt's Application in this case. Given the volume of testimony and documentary evidence which Grain Belt submitted with the Application on June 30, it clearly knew months ago that it was approaching the point where it would be ready to file. Thus had Grain Belt chosen to do so, it could easily have filed its Notice sixty or more days ago, and still filed its Application on June 30.[6] The Notice need not provide even an approximate date on which the Application will actually be filed, but it would have put interested parties on official notice that it was just a matter of time. The only possible purpose for not filing the Notice months ago was to hinder the efforts of those opposing the Grain Belt project. They obviously decided that this advantage was worth the risk of not filing the Notice.

12. If the Commission does not agree with the MLA's arguments in the preceding paragraphs, it respectfully asks the Commission to hold this case in abeyance at this point for a period of sixty days. It has taken Grain Belt almost a year to the day to file its second Application after the first was denied in Case No. EA-2014-0207. Given

[6] Commission Rule 4 CSR 240-4.020(1) says the Notice must be filed a minimum of sixty days prior to the filing of the Application, but does not specify any maximum number of days which may elapse between those two filings.

the relative positions of the parties in this case, and Grain Belt's deliberate decision not to file the Notice, an additional 60 days would provide a reasonable balancing of the parties' respective interests.

Wherefore, for the foregoing reasons the MLA respectfully asks the Commission to dismiss the Application filed in this case by Grain Belt on June 30, 2016, or alternatively, to hold this proceeding in abeyance for a period of 60 days.

Respectfully submitted,

/s/ Paul A. Agathen
Paul A. Agathen
Attorney for Missouri Landowners Alliance
485 Oak Field Ct.
Washington, MO 63090
(636)980-6403
Paa0408@aol.com
MO Bar No. 24756

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served upon the following parties by electronic mail this 2nd day of July, 2016:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
staffcounselservice@psc.mo.gov

Office of the Public Counsel
P.O. Box 2230
Jefferson City MO 65102
opcservice@ded.mo.gov

Karl Zobrist and
Joshua Harden
Dentons US LLP
Karl.zobrist@dentons.com
joshua.hardens@dentons.com

/s/ Paul A. Agathen
Paul A. Agathen
Attorney for the Missouri Landowners Alliance