

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) Case No. EA-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

SHOW ME CONCERNED LANDOWNERS' COMMENTS IN OPPOSITION
TO THE FOUR RESPONSES OF MJMEUC, GRAIN BELT EXPRESS,
INFINITY WIND, AND RENEW MISSOURI

Comes now Show Me Concerned Landowners (“Show Me”), pursuant to 4 CSR 240-2.080(13), and states its opposition to the Responses of MJMEUC, Grain Belt Express, Infinity Wind, and Renew Missouri. In response, Show Me states as follows:

1. On May 24, 2017, the Missouri Public Service Commission (“Commission”) had a discussion of the status of the above referenced case in response to some pressing inquiries from the public. During the discussion, the Chairman recognized the *Neighbors United* decision was now the subject of an application for transfer to the Missouri Supreme Court.¹ He observed that the outcome of the application and/or subsequent proceedings may or may not have an impact on this case. All the Commissioners agreed with the assessment. The discussion precipitated four “Responses” from four parties, namely the Missouri Joint Electric Utility Commission, Infinity Wind Power, Grain Belt Express Clean Line LLC and Renew Missouri (jointly, “Supporting Parties”) filed on May 31 and June 1.

2. Each of the Response’s primarily rehash their own views of the legal implications of *Neighbors United* holding on this case and claim that delay will be a *de*

¹ *Neighbors United Against Ameren’s Power Line v. PSC*, No. WD79883 (Mar. 28, 2017), *applications for transfer filed*, No. SC96427 (Mo., May 16, 2017).

facto denial of the application for the Grain Belt Express project. MJMEUC supplements this argument with its own brand of public interest, claiming that the MJMEUC public is the public to which this Commission should devote itself. Grain Belt's Response unsuccessfully attempts to distinguish *Neighbors United* from this case. It also describes the vast amount of additional work necessary for the development of the project that will be delayed by the regulatory uncertainty caused by the decision in this case being delayed. Renew makes several additional assertions that simply appear to be false.² Infinity Wind's filing merely supports MJMEUC's.

3. The Commission should strike the Responses in that they are attempts to brief once again this case on the issue of county assents and section 229.100 RSMo. The record of the case is now submitted to the Commission per Commission Rule 4 CSR 240-2.150. The parties had an opportunity to address these issues during the briefing schedule. An agenda meeting discussion should not provide an opportunity to brief these issues once again.

4. To the extent the Commission takes cognizance of the Responses, the Commission should reject them. Despite the Responses' attempt to cast the Mark Twain application in the *Neighbors United* case otherwise, the Mark Twain application was for a line certificate, not an area certificate. It is clear Commission policy that a utility company does not serve an area from a certificate for a 345 kV line. The Mark Twain Application was not in the form required by the Commission rules for an area certificate,

² "The need for further electrical transmission to accommodate cheap, plentiful wind energy from Kansas is not in dispute. These infrastructure investments will eventually be made in Missouri, but the Commission's delay could make them more expensive for all parties involved." Show Me, Missouri Landowners' Alliance and Staff have all placed the first issue in dispute. The Responses of the other parties contradict the second.

but for a line certificate. *Neighbors United* must be read with that understanding and none other. *Neighbors United* applies in this case.

5. If the Commission desires to rule on this case now, it must reject the Application. State statute and the Commission's rules specify that result. The law is clear.

Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities. Section 393.170.2, RSMo.

Likewise, PSC rules provide that when an electric utility applies to the PSC for a CCN, and the consent or franchise by a county is required, as it is pursuant to section 229.100, "approval *shall* be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired[.]" 4 CSR 240-3.105(1)(D)1 (4/20/08) (emphasis added). "If any of the items required under this rule are unavailable at the time the application is filed, *they shall be furnished prior to the granting of the authority sought.*" 4 CSR 240-3.105(2) (emphasis added).³

The Commission has no authority to declare the law. *Am. Petrol. Exchange v. Public Service Commission*, 172 S.W.2d 952, transferred 238 Mo. App. 92, 176 S.W.2d 533 (Mo. 1943). Therefore, it must follow the existing declared law. The Commission attempted the use of a condition once to permit a transmission builder to receive a line certificate subject to obtaining subsequent county assents. The Court rejected that attempt in the *Neighbors United* decision. How would the court view a second attempt to do the exact same thing in this case in the face of that rejection? Grain Belt has not provided the Commission evidence of all the assents. The Application must be rejected.

6. The Commission should not be manipulated by the Responses' feigned urgency. At all times, Grain Belt, Infinity Wind, and MJMEUC had the negotiations of

³ See *Neighbors United*, p. 6.

their agreements within their control. It was a voluntary arrangement, after all. Grain Belt could have pursued the county assents prior to its submittal of its Application as the Commission rule requires. The Commission should not be put in a position of rescuing these applicant parties from their own negotiation schemes.

7. As much as MJMEUC tries, it is not the defining interest in the public interest equation the Commission must consider in this case. MJMEUC is one wholesale customer. As Show Me clearly pointed out in its Reply Brief, citing *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*,⁴ this Commission must protect and defend the existing rights of the public, not one favored customer of Grain Belt. The MJMEUC special deal must yield to the rights of Missouri landowners, utility companies that already have rights to serve via existing authorized investments in the RTO infrastructure, and the RTO system that has been developed through the Commission's past efforts.

WHEREFORE, Show Me Concerned Landowners requests the Commission accept these comments in opposition to the Responses of the four Supporting Parties.

Respectfully submitted,

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⁴ 288 S.W.2d 679, 682 (Mo. App. 1956).

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 9th day of June, 2017.

/s/ David C. Linton