

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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

FORMAL COMPLAINT

Comes now the Missouri Landowners Alliance (the “Alliance”), and pursuant to the Commission’s Rule 4 CSR 240-2.070(4) hereby files this Formal Complaint against the aforementioned Respondents. The street address of the Alliance is 309 N. Main Street, Cameron, MO 64429. The street address for the three Respondents is 1001 McKinney Street, Suite 700, Houston, TX 77002.

In support of this Complaint, the Alliance states as follows:

1. Description of the Parties. The Alliance is a recently incorporated not-for-profit organization, whose membership consists primarily of landowners who live in the vicinity of the high-voltage, direct current transmission line being proposed by the Respondents (“the Line”).

Based on their January 13 Notice Of Intended Case Filing, docketed as Case No. EA-2014-0207, the first of the named Respondents would be the owner of the proposed Line. That entity is said to be a wholly owned subsidiary of the second named

Respondent, which in turn is a wholly owned subsidiary of the third named Respondent. The three respondents will generally be referred to here collectively as “Grain Belt”.

Counsel for the Alliance has discussed the matters which form the bases of this Complaint with counsel for Grain Belt, and they have been unable to resolve their differences.

2. Background Information. The proposed Line will cross through northern Missouri, as one segment of a 750 mile, 3,500 MW line beginning near wind farms in western Kansas, and ending in Indiana. Grain Belt has apparently not yet announced its preferred route for the Line. However, at this point the Line could traverse some 14 different counties in this state. Based on what the Alliance knows thus far about the Line, it plans to seek intervention in the forthcoming case where Grain Belt will ask the Commission to approve the Line.

3. Summary and Clarification of the Grounds For This Complaint. As set forth in more detail below, the Alliance alleges that Grain Belt has violated and continues to violate two provisions of the Commission’s rules regarding ex parte communications, as set forth in 4 CSR 240-4.020 (“the ex parte Rules”). So as to be clear from the outset: the Alliance is *not* alleging here that Grain Belt engaged in any prohibited, direct ex parte communication with any Commissioner, or any member of its staff. However, the Commission’s Rules go well beyond direct ex parte communications with the Commission and staff.

4. The Two Sections of the ex parte Rules which Grain Belt Has Violated. This Complaint contends that Grain Belt violated subsections (12) and (14) of the ex parte Rules. The violations stem from two internet websites operated and maintained by the

named respondents, as well as other materials they have published in furtherance of their position on issues which will be litigated in the forthcoming Commission case.

Subsection (12) of the ex parte rules states as follows:

It is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its employees, or the presiding officer assigned to the proceedings.

Subsection (14)(F) prohibits certain conduct and statements from an attorney, and by part (G) of that Subsection those same prohibitions are in effect made applicable to the parties as well. Subsection 14(F) states in part that the attorney (and thus in effect the parties to the case) shall:

During the pendency of an administrative proceeding before the Commission, not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to any of the following:

1. Evidence regarding the occurrence or transaction involved;
2. The character, credibility, or criminal record of a party, witness, or prospective witness;
3. Physical evidence, the performance or results of any examinations or tests ...;
4. The attorney's opinion as to the merits of the claims, defenses, or positions of any interested person; and
5. Any other matter which is reasonably likely to interfere with a fair hearing;

The basic position of the Alliance here is that under the terms of those two subsections, a party or an "anticipated party" to a contested Commission case violates the ex parte Rules if that party makes a statement, or issues a publication, which meets the following four criteria:

(1) The statement or publication argues for or advances that party's position on a substantive issue in a contested case, or states the party's "opinion as to the merits of" such an issue; and

(2) The party knows or should know that the issue is being contested or will be contested in a case before the Commission; and

(3) The party should reasonably expect its statement or its publication "to be disseminated by means of public communication"; and

(4) The statement or publication is not otherwise expressly allowed by the Commission's Rules (such as the exceptions set forth in subsection (10) of the Rule, or subsection (F) set forth above).

As discussed below, if this interpretation of the Rules is correct, then Grain Belt has obviously violated and continues to violate the *ex parte* Rules on a daily basis.<sup>1</sup>

The Rules do not explain *why* the Commission imposed the restrictions set out in subsections (12) and (14) of the Rules. However, they normally serve at least two legitimate purposes: (1) to prevent the Commission and its staff from inadvertently being exposed to arguments on the issues made outside the Commission's proceedings; and (2) to prevent a party from attempting to garner public support for a position which will be litigated at the Commission, in the hope (correctly or incorrectly) that the weight of public support might influence the outcome of the proceedings.

In a line certificate case, such as here, the Rules could be said to serve a third legitimate purpose as well. Before the PSC can approve the line, Grain Belt must first

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<sup>1</sup> The Alliance is not wed to the exact language of these four criteria, and would obviously be agreeable if the Commission formulates a different interpretation of the Rules which accomplish the same general result.

acquire a franchise from all of the affected County Commissions, as well as all of the affected municipalities. (See Sec. 229.100 RSMo; Commission Rule 4 CSR 240-3.105(1)(D)).

If the Grain Belt material is circulated publically, then either deliberately or inadvertently it could reach the county commissioners and municipal officials who are charged with granting the franchises. Inasmuch as the Commission will require proof in it's the Line certificate case that the necessary franchises have been issued (*Id.*), in order to protect the integrity of its own proceedings the Commission has a legitimate interest in how those franchises have been acquired.

This interest is further reflected in the state law which will require Grain Belt to file an annual report with the Commission which must include, among other things, a "full description" of its franchises, "stating in detail how each franchise stated to be owned was acquired." Sec. 393.140(6) RSMo. Furthermore, the Commission has broad authorization to open proceedings and conduct examinations into many areas within its jurisdiction, which would included the franchise reports filed by Grain Belt. Sec. 393.140(10) RSMo. Given these provisions of state law, it would be odd indeed if the Commission could not concern itself with how Grain Belt acquired its franchises until it was too late to do anything about it.

5. Issues Which Will Be Litigated in the Forthcoming Grain Belt Certification Case.

To succeed here, the Alliance must logically satisfy a two-part test. First, it must identify the substantive issues on which Grain Belt has argued its position in public

forums. And second, it must then identify specific statements disseminated to the public in which Grain Belt has advanced its own position on one or more of those issues.

The first part of this test addressed in the rest of this section 5. The second part is then addressed in section 6.

In its January 13 Notice to the Commission, Grain Belt states that the forthcoming certification case will involve (among other issues) “a determination of the public convenience”, and “public interest considerations”. This statement is so vague that one could easily argue that the issues mentioned there are addressed throughout much of Grain Belt’s website.

So in fairness, the Alliance will narrow the issues which it expects that Grain Belt will raise in the forthcoming case to the five listed below. This list is based in part on some of the issues which were recently litigated with respect to a similar Clean Line proposal before the Illinois Commerce Commission.<sup>2</sup> It is also based on the material which Grain Belt has consistently used over the past several years to promote its Line to the general public on its website. While there may be many additional issues raised in the forthcoming Commission case, the Alliance is confident that at least these five will be raised by Grain Belt itself:

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<sup>2</sup> Clean Line currently has five similar projects underway, one of which is the Grain Belt Line, and a second one being the Rock Island line. (See Exh. 21, p. 3, f.n. 1; and 1<sup>st</sup> page of Exhibit 4). The Rock Island line is now the subject of a pending line certificate proceeding before the Illinois Commerce Commission, in Docket No. 12-0560.

The following is a link to the Illinois Commission’s official record in that case: <http://www.icc.illinois.gov/docket/Documents.aspx?no=12-0560>. The Rock Island/Clean Line brief, available at that link, addresses the five issues identified in this section of the Complaint at the following pages of its Initial Brief, respectively: pp. 10-11; p. 5; p. 10; p. 9; and p. 14. And this is only in the introductory section of Clean Line’s 173 page brief covering these and many other issues which were litigated at the Illinois Commission.

(1) The supposed economic benefits that Missouri can expect from the Line, such as an increase in jobs, and an increase in tax revenues;

(2) The supposed economic benefits which result from using “low-cost” wind generation, as opposed to alternatives such as fossil generation;

(3) The environmental advantages of wind power, branding it as a “clean” source of power;

(4) The supposed downward pressure that the Grain Belt Line will have on wholesale prices for electricity in the Midwest; and

(5) The supposedly favorable impact that the proposed Line will have on transmission reliability.

We will know eventually whether or not Grain Belt supports its application to this Commission on the basis of one or more of the five issues listed above. If not, then the Alliance will willingly withdraw this Complaint. But if Grain Belt does raise one or more of these issues at the Commission, then as demonstrated below it already has argued its position on that same issue “outside the official course of the proceedings”. Moreover, unless Grain Belt significantly revises its websites, it will continue to violate the ex parte rules throughout the course of the forthcoming Commission proceedings.

Actually, the Alliance is confident that Grain Belt will have little choice but to raise the issues enumerated above. That is so because they have little or no evidence to support the traditional justification for transmission lines: that despite the recognized drawbacks of high-voltage lines, they are a necessary evil in providing reliable electric service to utility customers in the state of Missouri.

The Alliance is not objecting here to everything on the two Grain Belt websites. It recognizes, for example, that it is perfectly acceptable for Grain Belt to provide non-argumentative factual descriptions of the Line and its supporting towers; to include maps of the alternative routes of the Line; to provide information for potential suppliers of component parts for the line; and to address any other matter which is not likely to be a contested issue at the forthcoming Commission hearings. Thus parts of the Grain Belt website serve a legitimate purpose. The problem is, a visitor to the website could hardly read the legitimate material without encountering that which is not.

Finally, the Alliance is not arguing that the Line will bring no economic benefits at all to Missouri. It is the extent of those benefits which will be at issue. In addition, the Alliance will argue that whatever the level of those benefits might be, the economic benefits are not relevant to the decision of whether or not to approve the Line. If they were, one could just as easily justify a 2,000 mile transmission line between the Rocky Mountains and the east coast, with no interconnection whatsoever in the Midwest. The economic benefits to Missouri from such a line would be quite comparable to those being touted here by Grain Belt for the line between Kansas and Indiana.

6. Material from the Grain Belt Websites And Other Publications Which Address the Five Substantive Issues Identified Above.

The following are just some of the continuing claims made by Grain Belt on their websites, and in other publications, which address the merits of one or more of the five issues identified near the top of the preceding page.

Issue 1: Alleged economic benefits from the Line.

It was hardly a challenge to find material published by Grain Belt which extols the supposed economic benefits of its Line. For starters, Exhibit 1 to this Complaint is a copy of a seven-page section from the Grain Belt website titled “Benefits”.<sup>3</sup> This section of the website starts by claiming that the proposed Line “will bring about tremendous rural economic development, create thousands of temporary jobs and hundreds of permanent jobs, and dramatically reduce pollutants by millions of tons.” (*Id.*)

The “Benefits” section then lists a number of the supposed advantages that the Line will provide in Missouri and the other states to be traversed by the line, including new jobs and new investments. The website then invites the reader to select a particular benefit from their list about which the reader might like more information. At that point, additional detailed information about that particular “benefit” is provided.

For example, under the category “Jobs”, Grain Belt contends as follows:

It is estimated that the Grain Belt Express Clean Line will create more than 5,000 construction jobs to construct the transmission line and wind farms and more than 500 permanent jobs to maintain and operate the wind farms and the transmission line. The Grain Belt Express Clean Line will create employment opportunities in many sectors including manufacturing of turbines, towers and cable, and hospitality. [As discussed later, the figures quoted above do not purport even by Grain Belt to represent new jobs in Missouri.]

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<sup>3</sup> If an evidentiary hearing is held on this Complaint, the Alliance submits it will be able to demonstrate that the pages of the Grain Belt website included herein as Exhibits are accurate copies of some of the pages of the website which the Alliance printed out on February 23, 2014.

Also, the page numbers of the website material which appears in the Exhibits to this Complaint are the page numbers which were added to the 178 pages of the website printed out by the Alliance –not to the pages of the Exhibits themselves.

Clearly, the material at Exhibit 1 advances Grain Belt's position on a number of economic issues which they will undoubtedly raise themselves at the Commission proceedings.

Exhibit 2 of this Complaint consists of eight pages from the Grain Belt website, where it solicits letters of support to be filed in Grain Belt's forthcoming Application to the Commission. The second page of this Exhibit is a form letter to the Commission which the visitor is in effect asked to sign. Even the letter itself includes the standard Grain Belt arguments about the supposed benefits which will result from its proposed project.

The solicitation is further supported by claims such as those found at the fifth page of Exhibit 2: "The Grain Belt Express Clean Line will create new jobs, pay significant taxes to rural communities, and provide Missourians access to low-cost, clean energy." The next two pages allows the visitor to choose the benefits they care most about from a list provided there by Grain Belt. The last page of the Exhibit shows a tailored form letter which the Commission should be seeing shortly.

The Alliance is not claiming there is something inherently wrong in facilitating letters of support to the Commission. The only problem comes if such letters are solicited through communications which are themselves improper.

Exhibit 3 consists of the first seven pages and the final page of a forty-five page economic study conducted for Grain Belt by two professors. The complete economic study is linked to the website, through the second page of Exhibit 1, *supra*.

The economic study sets out in detail what Grain Belt will claim are a host of economic benefits associated with the Line: the number of three-year construction jobs

the project is expected to bring to Missouri; the number of permanent operations jobs that the project is expected to bring here; the additional tax revenue in a variety of categories that the project is expected to generate in our state; the economic impacts of the Kansas wind farm which will supposedly accrue to Missouri; and various other indicators of the supposed economic benefits for Missouri and each of the other states to be traversed by the Line.

The final page of the full study, included as the last page of Exhibit 3, even includes a glowing description of the “qualifications” of the two authors. This page is clearly a “public communication” about the “credibility” of a “witness or prospective witness”, which in and of itself is a violation of Subsection 14(F) of the ex parte rules, *supra*.

The Commission will likely see this study as part of Grain Belt’s evidence in the forthcoming case. If this document does not constitute a published argument on the merits of contested issues, then it is difficult to imagine what would suffice.

Exhibit 4 is a five page document which includes just some of the many other pages from the website where Grain Belt refers to various economic benefits to be derived from its proposed Line.

Exhibit 5 is a four-page document from the second of the websites in question: the Clean Line site. At the third page of this Exhibit, Clean Line makes a number of claims about the supposed economic benefits of its Line:

Projects like Grain Belt Express create jobs and economic opportunities – in manufacturing, construction, maintenance, and through property taxes over the long term. To ensure that the states that host Grain Belt Express will benefit as much as possible from the project, we’ve looked for local manufacturers that could make the components we hope to construct in Missouri.

The material complained of here by the Alliance is not restricted to the websites. For example, even when publishing newspaper announcements about forthcoming meetings in northern Missouri, Grain Belt cannot resist including its claims about economic benefits of the Line. (See Exhibit 6 hereto). It is unfortunate that the Alliance does not have a complete record of everything said at those meetings.

But what the Alliance does have are some of the newspaper reports of what was said at some of the Grain Belt meetings. For example, Exhibits 7 and 8 are two separate newspaper reports which covered presentations at Crowder College in northern Missouri where the Grain Belt representative alluded to a wide variety of the economic benefits to be derived from the Line. As Grain Belt surely knew, those claims were then further “disseminated by means of public communication” to landowners, county commissioners, municipal officials and others in the area where the Line is to be built. (Quoting subsection 14(F) of the *ex parte* Rules, *supra*).

Exhibits 9, 10 and 11 relate to a press conference sponsored by Grain Belt in Jefferson City on January 30 of this year. Exhibit 9 is a three-page press release announcing “agreements” by Grain Belt with three Missouri manufacturers for construction of component parts for the line. Of course the press release is not confined to simply announcing the new agreements. It is also laced with claims about other benefits which Grain Belt is claiming for the Line.

Exhibit 10 is a two page article from a Jefferson City newspaper covering the press conference. It not only discusses the new agreements, but quotes their director of development about how the project “would provide clean energy at a low cost, while creating jobs and generating new property tax revenues for communities within the

state.” (In fairness, the newspaper account also includes statements from persons who are opposed to the Line).

Finally, Exhibit 11 is an affidavit which lists some of other media outlets which covered that press conference, including the local television station in Jefferson City.

With this kind of news coverage of an event held in the Commissions’ own backyard, it would have been quite difficult for Commissioners and their staff to avoid seeing or hearing a preview of Grain Belt’s position on some of the very issues it will undoubtedly raise in the forthcoming case.

As is apparent from Exhibits 1 through 11, Grain Belt has and continues to advance its position on the supposed economic benefits of the Line through a variety of means, all of which “a reasonable person would expect to be disseminated by means of public communication”, and all of which were made “outside the official course of the proceedings”. (Subsection (14)(F), *supra*). And it is fair to assume that much of this material has already found its way to the County Commissioners and municipal authorities from whom Grain Belt must seek approval for the Line.

The Alliance is not arguing that the Line will bring no economic benefits at all to Missouri. It is the extent of those benefits which will be at issue. In addition, the Alliance will argue that whatever the level of those benefits might be, they are not relevant to the decision of whether or not to approve the Line. If they were, one could just as easily justify a 2,000 mile transmission line between the Rocky Mountains and the east coast, with no interconnection whatsoever in the Midwest. The economic benefits to Missouri from such a line would no doubt be quite comparable to those being touted here by Grain Belt for the line between Kansas and Indiana.

Issue (2): Supposed benefits of “low-cost” wind generation. Another of Grain Belt’s primary selling points for the proposed Line is that it will facilitate the transmission of additional wind generation, which they consistently advance as being a “low-cost” alternative to traditional sources.

One example is at the third page of Exhibit 1, *supra*, where Grain Belt claims that its Line “will deliver 3,500 megawatts of low-cost, renewable power, enough clean energy to power approximately 1.4 million homes per year”. Similar references to the supposedly “low cost” of wind generation are shown at Exhibit 12 to this Complaint.

One final example is at Exhibit 13, which is a newspaper report of what Grain Belt spokesman Mark Lawlor said at a meeting in Caldwell County on or about September 11 of last year. According to the report, among the numerous claims made at that meeting was the following: “According to Lawlor, wind is now the cheapest source of electricity in the United States. Wind is being generated for 4.5 to 5 cents per kilowatt hours. Current rates run on average 7 to cents in Missouri.” The Alliance will deal with the merits of that claim later. The purpose at this point is simply to show that Grain Belt has and continues to argue its position on the supposed “low cost” of wind generation, through means designed to be disseminated to the general public.

Issue (3): The environmental benefits of “clean” wind generation. Grain Belt has gone to great lengths to brand wind power as a “clean” source of generation, compared to non-renewable sources. For example, at the fifth page of Exhibit 1, *supra*, they list a host of pollutants which allegedly will be reduced if wind generation displaces those other sources. Through a link at that page, the reader can then view an even more extensive

presentation from Grain Belt about how the claimed environmental benefits were estimated.

Numerous other pages on the website make this same general claim, consistently referring to wind power as the “Clean” source of generation. Some examples from the website are shown at Exhibit 14.

Again, Grain Belt has publically disseminated its position on another of the fundamental arguments which they themselves will undoubtedly make at the Commission: that “clean” wind power will produce significant and very specific environmental benefits, including here in the Midwest.

Issue (4): The Line will supposedly exert downward pressure on wholesale prices for electricity in Missouri. This is another of the issues which Grain Belt itself will undoubtedly raise before the Commission in its forthcoming application case. This particular claim is made on every page of the “Benefits” section of its website, where Grain Belt claims that retail customers in Missouri and elsewhere “will benefit from the lower prices resulting from the significantly increased competition that the project will bring...” (Exh. 1, *supra*).

Additional claims from Grain Belt on this issue are included at Exhibit 15 to this Complaint. Again, this material clearly promotes Grain Belt’s position on supposed benefits from the Line which they know full well they will argue in the forthcoming case.

Issue (5): The beneficial impact of the Line on the reliability of the transmission system. This is the last of the five issues mentioned above by the Alliance. Two pages of the website where Grain Belt discusses this issue appear at Exhibit 16, both of which mention the additional reliability which supposedly will result from their Line.

At the second page of the Exhibit, for example, Grain Belt makes the following claim: “**Improved Reliability:** DC transmission can enhance system stability, allow the operator complete control over power flow, and facilitate the integration of wind from different resource areas.”

That may be what Grain Belt claims, but others apparently disagree. For example, in a the recent proceeding at the Illinois Commerce Commission involving a comparable Clean Line project (their Rock Island line) a witness for Commonwealth Edison strongly questioned the Rock Island claims of improved system reliability.<sup>4</sup>

The Alliance mentions the testimony from Commonwealth Edison here not to demonstrate the truth of its allegations, but simply to show that Clean Line’s arguments about system reliability were a subject of dispute. In all likelihood, this issue will also be raised by Grain Belt itself in their case before this Commission.

Although the Alliance has cited only two references where Grain Belt mentions this issue on its website, that is twice as many as are needed to establish a breach of the ex parte rules.

As is apparent from all of the above, Grain Belt has engaged and continues to engage in an elaborate PR campaign designed to sway public opinion on matters which it will litigate in the forthcoming Commission proceedings. Their campaign is extensive, it is expensive, and it is professionally managed in all of its various aspects. They have even incorporated Facebook and Twitter into their PR arsenal, and added links in their website to a number of video presentations. (See Exh. 17).

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<sup>4</sup> Direct testimony of Commonwealth Edison witness Steven T. Naumann, at pp. 9 – 10 e.g. This testimony is available through the link provided at footnote 2 above, as part of the 6/25/2013 file titled “Direct Testimony on behalf of Commonwealth Edison Company”.

For example, in its Application to the FERC for approvals regarding the proposed Line, Grain Belt refers to their video “that describes the need for the Project and how Grain Belt Express will bring significant economic benefit to states through much-needed transmission expansion for new wind energy projects .... “ (Exh. 23, p. 8).

This description of the Grain Belt PR efforts is not intended in the pejorative sense at all. The Grain Belt publicity campaign is undoubtedly effective, and will no doubt accomplish two of its principal goals: to sway public opinion on the Line in Grain Belt’s favor, and to thereby convince members of the public to sign on to the computer-generated letters of support which Grain Belt will file with the Commission.

The letters may have no effect at all with the Commission. However, the ultimate impact of Grain Belts efforts should not be the deciding question here. If Grain Belt has violated the Commission’s ex parte rules, their conduct should not be excused by some sort of “no harm, no foul” escape clause.

We may never know how many people in Missouri were exposed to and influenced by Grain Belt’s one-sided presentation on issues which they themselves will raise later at the Commission. Nor could the Alliance ever hope to present its own position to all of the people reached by Grain Belt. Grain Belt has been waging an extensive PR campaign for about four years, and will likely win that battle.

Just how Grain Belt has gone about doing so is illustrated in materials presented at a recent conference in Houston, where participants spent two days learning various techniques for “selling” a transmission project to the public.

A copy of the initial brochure for that conference is attached here as Exhibit 18. As noted on the first page, the conference was held this past January, and was to be

hosted by Grain Belt's parent company – Clean Line. As noted at page 3 of that brochure, the keynote speaker at the conference was to be the Executive Vice-President of Clean Line.

According to the brochure, this is a sample of what those involved with building and siting transmission lines were to learn in Houston:

- How best to utilize social media to “engage the public”, including who you can expect to reach, and how to go about doing it. (Exh. 18, p. 4) Not surprisingly, an expert in social media from Clean Line was to be one of the two speakers on this subject.

- How to deal with people disparagingly referred to as “NIMBYs” and “BANANAs”. Ironically, the audience at that session was also told that a driving force behind the emergence of community-based opposition groups has been the push to build more infrastructure to support more renewable energy. (Exh. 18, p. 4).

- In “Marketing to Mayberry” the attendees would learn, among other things, how to talk down to people in small town, rural America, by communicating with them “in a conversational tone rather than corporate tone...” (*Id.*) Presumably, these techniques were designed with the citizens of rural northern Missouri in mind.

- “How to frame and ‘sell’ infrastructure projects...”, and how to use “effective strategies and tactics, and share in critique of on-camera training...” (Exh. 18, p. 6)

- How to deal with the media, including: “Getting into a reporter’s head”; “How to answer questions you don’t want to be asked”; and how to “position” your message to the media. (Exh. 18, p. 6)

- Finally, the Executive Vice President from Clean Line was to explain “how to ensure that our stakeholders feel they are informed and part of the process”. (Exh. 18, p.

3; emphasis added). Apparently, it is not important to Clean Line that stakeholders actually be informed, or actually be involved in the process, so long as they are somehow made to feel that they are.

Based on the brochure, the basic theme of the Houston conference was clear: how to employ “a wide range of participation techniques in order to successfully complete the siting process.” (Exh. 18, p. 2, par. 2). Or as stated elsewhere in the brochure, “Without the public support, the transmission siting process [read “regulatory approval”] can be delayed or stopped all together.” (Exh.18, p. 5).

It is a page from Grain Belt’s own playbook: use a wide variety of PR tactics to win public support; utilize that public support in whatever ways possible, such as gathering letters of support to file with the Commission; and then hope that all the manifestations of public support will have their intended effect with the Commission and other public officials. If that is *not* Grain Belt’s ultimate strategy, then why spend all the money and the effort on the elaborate PR campaign described above? There is nothing inherently wrong in the teachings of the Houston conference, unless of course those strategies lead to violations of state-specific regulations like the Commission’s *ex parte* Rules.

Whether from embarrassment over the conference brochure, or for some other reason, Grain Belt apparently withdrew at some point as host of the Houston Conference. (See Exh. 19, which is a revised brochure, listing a new host of the conference). The two Grain Belt people slotted to speak at the conference also withdrew. Nevertheless, the conference did go on, with only minor changes to the brochure in an apparent attempt to

remove the more embarrassing aspects of the presentations – including the insulting reference about “Marketing to Mayberry”. (Compare Exhibits 18 and 19).

One final argument regarding this section of the Complaint: with respect to each of the five issues listed at page 7 above, one fair test to apply in determining the appropriateness of the Grain Belt websites would be this: would the ex parte Rules in question allow Grain Belt to buy a full-page ad in all the major newspapers in this state, on the day it files its application with the Commission, and publish the same arguments it is making on its website? If not, the website material is obviously not appropriate. Yet it is quite likely that Grain Belt has already reached a much larger audience through its websites, Facebook, Twitter and videos than it could hope to reach with just this one series of newspaper ads.

7. False and Misleading Statements from Grain Belt. Even if none of Grain Belt’s statements on the contested issues was false or misleading, they would violate the ex parte Rules. However, several do not pass even that simple test. The questionable nature of some of Grain Belt’s statements is important not only for what they say about Grain Belt, but also because, as discussed later, the Commission has even clearer legal authority to restrict publications which mislead the public.

The Alliance is particularly concerned in this regard with the following material from Grain Belt:

As discussed earlier, at a meeting in September of last year Mr. Mark Lawlor spoke on behalf of Grain Belt at one of their many “Marketing to Mayberry” meetings in rural northern Missouri. Mr. Lawlor is identified on the Clean Line website as their Director of Development. (Page 4 of Exh. 5)

As mentioned, Mr. Lawlor is quoted in the newspaper account of that meeting as making the following claim: “wind is now the cheapest source of electricity in the United States. Wind is being generated for 4.5 to 5 cents per kilowatt hours. Current rates run on average 7 to 10 cents in Missouri.” (Exh. 13, par. 5)

Mr. Lawlor surely realized that his apples-to-oranges comparison is absolutely ludicrous. He contends that wind is now cheaper than every other source of electricity in this country by comparing what must include only the bus bar and perhaps transmission costs for wind generation (4.5 to 5 cents), with the *total* cost of the rates in Missouri (the 7 to 10 cents).

The problem, of course, is that the total Missouri rates include much more than just the costs of generation and transmission. The 7 to 10 cents retail rate also includes the hundreds of other components in the final rate of every retail customer in the state: all of the cost of the distribution lines and supporting structures; the cost of meters and meter reading; billing costs; the cost of the line crews which maintain and restore service; the customer-service call centers; the cost for bad debt write-offs for unpaid bills; and all the countless other costs which go into the final 7 to 10 cents retail rate for electricity. As Mr. Lawlor surely knows, by the time the “cheap” wind energy reaches the retail customer, it will also have these other costs added to it.

For a more objective estimate of the cost of wind generation, in Ameren’s 2013 update of its Integrated Resource Plan, it uses a levelized cost of energy from wind generation of just under 10 cents per Kwh. (See last page of Exh. 20)

Yet the impression left by Mr. Lawlor was clear to his audience, and to those reading the coverage of his statement in the press: if you approve our project, your rates could be drastically reduced. That claim could hardly be more misleading.

As discussed above, Grain Belt has also sold its project to the public on the basis of environmental concerns, constantly repeating that its Line will carry “clean” wind generation. In fact, it has gone so far on its website as to claim or at least imply that the proposed 3,500 MW line will carry *only* wind generation: “The Grain Belt Express Line will deliver 3,500 megawatts of low-cost renewable power from Kansas to Missouri, Illinois, Indiana, and states farther east.” (Exh. 21). It has also implied as much in other portions of its website. (See material from three other pages of the website at Exhibit 22). Just as telling, there apparently is not even a hint on the Grain Belt website that their Line just might carry fossil generation as well.

While Grain Belt may wish that its Line could transmit only wind generation, it cannot know at this point *what* type of generation it will actually carry. In fact, at this point it cannot contract with *any* type of generator or any purchaser for use of its line, because it has no legal authority to do so. It applied to the Federal Energy Regulatory Commission (FERC) on November 15, 2013, for authority to negotiate and sign such contracts. (See several pages from that filing at Exhibit 23). But the website does not mention any response as yet from the FERC.

In fact, it is quite unlikely that any of the expected wind generators in Kansas will even exist until after Grain Belt receives all the necessary approvals for its Line. As Clean Line noted in the Rock Island proceeding at the Illinois Commission, the wind generators will not construct new wind farms until the necessary transmission service

becomes available.<sup>5</sup> So any claims about what the Line will or will not carry are at this point just speculation.

Grain Belt could be certain at this point that its Line will be limited to wind generation only if it has already decided to refuse access to the Line by any other form of generation. In other words, if Grain Belt fails to operate the Line on a non-discriminatory basis.

But that is not likely to happen either. As Grain Belt acknowledges on its website, the FERC “will have oversight of the terms and conditions of service and rates charged and will ensure that the Project’s transmission lines are operated on a non-discriminatory basis.” (Exhibit 24).

Even in the FERC filing mentioned earlier, Grain Belt assured that agency that the Line would be operated on a non-discriminatory basis. (See, e.g., p. 11 of Exh. 23).

Furthermore, while Grain Belt was saying or at least strongly implying on its website that its line would carry only “clean” energy, it had not even heard back yet from the potential suppliers of the wind energy in Kansas. According to the material on its website, Grain Belt did not begin soliciting responses to a Request for Information from prospective wind generators until November 18, 2013. (Second page of Exh. 25). Those responses were not due back to Grain Belt until January 13 of this year. (*Id.*)

So Grain Belt was at least implying on its website that its Line would carry only wind power well before the due date for its Request for Information from those who were to supply that wind power. And there is no mention on the website that Grain Belt has even tried yet to determine the interest in its Line from other forms of generation.

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<sup>5</sup> See Rock Island Brief, page 5, as referenced at footnote 2 above.

Why might Grain Belt try to sell its proposed Line as being fossil-free, when it does not yet know what type of generation its Line will carry? Perhaps simply to increase the profitability of its business.

In Clean Line's filing with the FERC regarding its Rock Island line (see footnote 2), they sought permission to give preference on their line to renewable sources of generation, over non-renewables such as fossil fuels. The reason Clean Line gave to the FERC for this proposed discrimination is telling: "Establishing a preference for renewable energy is essential to developing the Project because interested stakeholders and potential customers, including environmental organizations and renewable energy developers, are less likely to support a transmission project that they fear ultimately will be used to transmit electricity from coal-fired generation." (See Exhibit 26, near end of only full par. at p. 34). Clean Line's request to discriminate in favor of renewables was later rejected by the FERC. (Exh. 27, p. 11).

In short, Grain Belt cannot possibly know at this point that its Line will be used only for transmission of wind generation. But for whatever the reason, Grain Belt has been less than forthcoming on its website in addressing this issue.

On a somewhat related matter, Grain Belt claims at a number of places on its website that at least some of the wind power will be sold to Missouri and other nearby states. (See pages from the website at Exhibit 28). But as stated above, Grain Belt cannot even enter into contracts at this point to sell power to *anyone*. So it cannot possibly be certain that it will sell or deliver power at the proposed interconnection with Ameren in northeast Missouri. Nor can Grain Belt possibly know at this point that anyone will buy the power in Indiana, and transmit it back to Missouri. Thus any claims

that any of the so-called cheap and clean wind power will be sold to people in Missouri are misleading at best.

The same could be said about Grain Belt's discussion of how it will acquire the numerous right-of-way easements it will need for the Line. Green Belt says on its website that it "will negotiate with landowners to purchase easements" for the Line. (Exh. 29). But the website never even mentions that at some point Grain Belt will also be seeking the right of eminent domain from the Commission – just in case those "negotiations" are not to their liking. This is less than full disclosure by Grain Belt.

They took a similar approach in their discussion of Electromagnetic Fields (EMFs). Their website includes several comments about the potential health effects of EMFs, and says that "the current body of research does not indicate that strong static electric or magnetic fields cause long-term health effects. (See last page of Exh. 30).

However, Grain Belt apparently does not even *mention* on its website that other studies have concluded EMFs may indeed pose significant health risks. For example, according to the newspaper article at Exhibit 31, Fox News carried a report in 2005 "that claimed children who live within 200 meters of power lines could be as much as 69 percent more likely to develop leukemia." (Last par. of p. 2, Exh. 31.) Whichever side is right, Grain Belt presented a totally one-sided and thus misleading view on an issue which is no doubt of vital concern to many landowners in the area.

One problem with all of the material addressed in this section is that once it gets published on the internet, it is virtually impossible to rebut it with everyone who had access to Grain Belt's view of the issues.

8. Additional Considerations. This Complaint can be resolved by the Commission on the basis of the facts and argument already presented above. However, in this section the Alliance will comment on additional considerations which the Commission may find relevant.

a. At what point did Grain Belt become subject to the two subsections of the ex parte rules at issue here. Some of the ex parte rules apply to “parties” and some to “anticipated parties”. One could logically argue that Grain Belt has expected to be a party to the forthcoming Commission case since at least the time when it first set up its website. If nothing else, Grain Belt would have been subject at that point to subsection (12) of the Rules, as set forth at page 3 of this Complaint.

And if not by then, Grain Belt certainly became a “party” when it filed its Notice of intent to file for approval of the Line, on January 13 of this year. At that point, it legally submitted itself to the personal jurisdiction of the Commission. And virtually all of the Grain Belt materials mentioned in this Complaint, including all the pages from its websites, were published or available on the internet *after* January 13.

And if not when the Notice was filed, then Grain Belt will certainly become a party to a Commission proceeding when it files its application for approval of the Line. If Grain Belt has not significantly revised its websites by that point, it will definitely be in violation of the ex parte rules on a continuing basis.

b. Approving Grain Belt’s Publications Here Would Set a Dangerous Precedent. If the Commission determines that Grain Belt’s promotional websites do not violate the ex parte rules, we should expect even more elaborate extensions of that same game plan in the future. Prior to and during a major rate case, for example, an investor-owned

utility could hire paid actors to participate in video presentations extolling the virtues of the utility, and add links to that video on their own website, on U-Tube, and on every other form of social media that it may find useful.

With perhaps tens if not hundreds of millions of dollars at stake, an elaborate PR campaign might be well worth the effort if the utility could reduce to any significant degree the number of people who normally appear at public hearings on the rate increase. Or if they could generate a large number of “letters of support” to include with their rate case filing at the Commission.

If Grain Belt’s website is permissible, then so is this hypothetical example, as well as any more elaborate extension of that strategy which imaginative PR people might come up with. However, the Alliance submits that all such campaigns which address contested issues do in fact violate both the spirit and the letter of the ex parte Rules quoted at page 3 of this Complaint.

c. Quantification of Damages. The Alliance and its members will suffer no direct, quantifiable damage as a result of Grain Belt’s alleged wrongdoing here, unless the Commission ultimately allows Grain Belt to build the Line. However, Commission Rule 4 CSR 240-2.070(6) in essence says that a complainant need not allege any direct damages in its complaint. And if the Line is approved, and built, members of the Alliance and others in the area will suffer damages which greatly exceed the \$3,000 amount which would classify this as a Small Formal Complaint under 240-2.070 (15).

d. The ex parte rules do not violate Grain Belt’s freedom of speech. The Commission’s ex parte rules constitute something of a “gag order”, in that they bar certain forms of communication by those who are parties to Commission proceedings.

However, courts frequently impose such gag orders, and the limitations they impose are not per se unconstitutional. Gag orders have certainly been upheld where the need is less compelling than here.

The basic rule was expressed by the United States Supreme Court as follows: “The courts may take such steps by rule and regulation that will protect their processes from prejudicial outside influence.” *Sheppard v. Maxwell*, 384 U.S. 333, (1966).

Perhaps the strongest support for gag rules comes from the U. S. Court of Appeals in *United States v. Brown*, 218 F.3d 415 (5<sup>th</sup> Cir. 2000). The gag order at issue there was much more sweeping than what would be imposed under the Alliance’s interpretation of the Commission’s ex parte rules. Nevertheless, the gag order there was upheld by the Court of Appeals.

Moreover, the communications from Grain Belt which are at issue here are not afforded the same level of protection as some other forms of speech. The material challenged here is what the courts term “commercial speech”, which is defined as “an expression related solely to the economic interests of the speaker and its audience.” *Kansas City Premier Apartments, Inc. v. Missouri Real Estate Commission*, 344 S.W. 3d 160, 168 (Mo banc 2011). The Commission’s ex parte rules, as interpreted by the Alliance, clearly meet the four-part test for constitutionality discussed in that case. *Id.* at 168-69. That is particularly true where, as here, the remarks may potentially mislead the public. *See Id.* at 168.

Finally, it would indeed be an oddity if the Commission was to declare that its own rules are unconstitutional. If the “free speech” issue is to be addressed anywhere, it should at the courts of this state.

e. The Alliance position here would have no impact on legitimate website materials. The Alliance recognizes that most major organizations today have internet websites, and that they are used in furthering a wide variety of interests which are beneficial to that organization, its stake-holders, and the public in general. However, a ruling against Grain Belt here would not affect any legitimate content of any of those websites. It would only affect an organization's if it became or intended to become a party to a contested Commission case. And even then, the ex parte Rules would only preclude the website owner from addressing the merits of issues which it knows or has reason to know will be litigated at the Commission.

f. Possible Concerns About an "Uneven Playing Field". The Commission's ex parte rules typically apply to parties or prospective parties to contested Commission cases, and leave all non-parties essentially free to say whatever they want to about the issues being litigated. This may indeed create an uneven playing field for the parties, vis-à-vis the non-parties. However, the Rules also ensure a *level* playing field as between parties who play by the rules, and those who may be tempted to skirt them. The application of the rules is simply one consequence of seeking some form of relief at the Commission.

Any attorney who has represented utilities in major rate cases knows all too well the frustration of being unable to publically respond to public criticism from non-parties. However, the appropriate response from the attorney and the client is through the evidence at the Commission proceedings, not through a PR campaign in the media. The regulated utilities in this state, as well as Staff, Public Counsel and others who regularly

appear in Commission proceedings, have presumably learned to live with this sort of uneven playing field. Grain Belt deserves no special consideration.

9. Prayer for Relief. For the reasons set forth above, the Alliance respectfully asks the Commission to issue an Order finding, concluding and ordering as follows:

(1) that as a general proposition, a party or an “anticipated party” to a contested Commission case violates subsections (12) and/or (14)(F) of the Commission’s ex parte Rules if that party or anticipated party makes a statement, or issues a publication, which meets the four criteria set out at page 4 of this Complaint;

(2) that based on the Complaint filed by the Missouri Landowners Alliance, and the uncontested statements therein and the Exhibits attached thereto, the Commission finds that Grain Belt did violate subsections (12) and (14)(F) of the Commissions’ ex parte Rules for the reasons set forth in the Complaint;

(3) that Grain Belt is directed to revise its two websites, referred to and quoted by Alliance in its Complaint, so as to conform to the Commission’s ex parte rules as interpreted above;

(4) that the letters of support included by Grain Belt’s with its Application for Commission approval of the Line constitute the fruit of a poisonous website, and are therefore stricken from the record in that case; and

(5) that the Commission grant the Alliance and the general public such other relief as it deems to be just and reasonable under the circumstances.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint, and the Exhibits attached thereto, were served this \_\_\_ day of March, 2014, by first class U.S. mail to the following:

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