In the Missouri Court of Appeals
Eastern District

DIVISION TWO

GRAIN BELT EXPRESS CLEAN LINE, LLC; MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION; AND MISSOURI LANDOWNERS ALLIANCE,	)	
Appellants,	)	No. ED105932
vs.	)	
PUBLIC SERVICE COMMISSION,	)	
Respondent	)	
(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).	)	Appeal from the Public Service Commission
	)	Filed: February 27, 2018

OPINION

Grain Belt Express Clean Line, LLC ("Grain Belt"), and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") appeal the report and order issued by the Public Service Commission of the State of Missouri ("Commission") denying Grain Belt's application for a certificate of convenience and necessity ("CCN") to construct and maintain an interstate electrical line and associated facilities. In addition, although it prevailed before the Commission, Missouri Landowner's Alliance ("MLA") also filed a separate appeal of the Commission's order.

BACKGROUND

The legal issue presented in this matter is simple even though the underlying project is incredibly complex involving multiple states, counties, and hundreds of miles of potential construction, as well as economic and environmental implications. In August 2016, Grain Belt filed an application for a certificate of convenience and necessity with the Commission pursuant to Section 393.170.1 RSMo (2016),[1] 4 CSR 240-2.060, and 4 CSR 240-3.105(1)(B). Grain Belt sought permission from the Commission to construct, own, operate, control, manage, and maintain a high voltage direct current transmission line and associated facilities. The Commission held public hearings in Ralls and Monroe counties during which evidence was presented regarding the scope of the proposed project. The overhead, multi-terminal line would span over 700 miles across three states. The project would cross 206 miles through the eight Missouri counties of Buchanan, Caldwell, Carroll, Chariton, Clinton, Monroe, Randolph, and Ralls. The line would deliver 500 megawatts of wind-generated electricity from western Kansas to customers in Missouri.

[1]All further statutory references are to RSMo (2016), unless otherwise indicated.

The Commission subsequently issued its report and order, deciding it could not lawfully issue a CCN to Grain Belt without consent from each county affected because it was bound by the decision of the Western District in *Matter of Ameren Transmission Co. of Illinois*, 523 S.W.3d 21 (Mo. App. W.D. 2017) ("*ATXI*"). In a concurring opinion joined by Commissioners Hall, Kenney, Rupp, and Coleman, the Commission disagreed with the Western District's opinion in *ATXI*, but believed it to be binding precedent upon their decision, mandating denial of Grain Belt's CCN. The present appeal followed.

DISCUSSION

Grain Belt presents three points on appeal, all of which contend the Commission erred in denying Grain Belt's application for a CCN pursuant to Section 393.170.1 based upon the decision in *ATXI*. We agree and decline to follow the Western District's interpretation of Section 393.170. Therefore, we consider all three points together.

Standard of Review

Pursuant to Section 386.510, our review of the Commission's order is two-pronged. First, we determine whether the order is lawful. Second, if lawful, we consider whether the order is reasonable. The burden of showing the order is unlawful or unreasonable rests with the appellant. *Matter of Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 754, 758 (Mo. App. W.D. 2016). Whether the Commission's decision is lawful is determined by whether statutory authority exists for its issuance. *Id.* We review all legal issues *de novo*. *Id.* Neither convenience nor necessity is a proper consideration for this court in determining whether the Commission's decision is authorized by statute. *State ex rel. Cass County v. Public Service Commission*, 259 S.W.3d 544, 548 (Mo. App. W.D. 2008). As previously noted, MLA and MJMEUC each filed appellate briefs asserting several points and sub-points on appeal relating to

the reasonableness of the Commission's order. However, our review as to the lawfulness of the Commission's order is dispositive; therefore, we do not reach the question of reasonableness in this case.[2]

Analysis

I. Public Service Commission

The Missouri Public Service Commission was created by Section 386.040 and only has such powers as expressly conferred upon it by statute. *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo. App. K.C. 1960). The Commission's powers are purely regulatory. *Id*. The primary purpose of the Commission is to promote public welfare. The enabling statutes permit the Commission to enact regulations to correct a public utility's abuse of any property right, rather than direct its use. *Id*. The Commission must balance the interests of the general public as well as the interests of customers and investors of a regulated utility on a statewide basis and not consider the utility's operating area in isolation. *State ex rel. Cass County*, 259 S.W.3d at 549.

II. Two Distinct Certificates of Convenience and Necessity

Pursuant to Section 393.170, a public utility may seek a certificate of convenience and necessity from the Commission. Due to the different needs being balanced by the Commission the Missouri legislature specifically created two separate subsections that contemplate two distinct types of certificates of convenience and necessity. These distinct types are commonly referred to as "line certificates" and "area certificates."

[2]The Commission filed a motion to dismiss MLA's appeal, which was taken with the case; however, because our review of Grain Belt's points on appeal is dispositive, we do not reach the claims raised by MJMEUC or MLA. Therefore, we deny the Commission's motion to dismiss MLA's appeal as moot.

A. Line Certificates

Grain Belt is specifically seeking a CCN pursuant to Section 393.170.1, which states, "[n]o gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission." Section 393.170.1 grants the Commission the authority to issue a CCN to a utility to construct electrical plants, which is commonly referred to as a line certificate. *State ex rel. Union Elec. Co. v. Public Service Commission*, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989), *State ex rel. Cass County*, 259 S.W.3d at 548-49.

B. Area Certificates

Section 393.170.2 grants the Commission the authority to issue a CCN for the utility to serve a territory, which is commonly referred to as an area certificate. *Id*. Pursuant to Section 393.170.2:

> No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. 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.

This authority is typically utilized to saturate a defined geographic area with retail electric service. *Id*. Thus, a line CCN constitutes approval from the Commission for construction purposes, and an area CCN grants the utility permission to exercise a franchise by serving customers. *State ex rel. Cass County*, 259 S.W.3d at 549. Grain Belt is not seeking a franchise to serve customers via an area CCN pursuant to this section.

In contrast to an area certificate, a line certificate, such as the one sought by Grain Belt here, does not impose any obligation on the utility to serve the public generally along the line's path. *State ex rel. Union Elec. Co.*, 770 S.W.2d at 285. Thus, the elements of proving the public necessity for the construction of a line are less onerous than those requiring local assent to prove the necessity of an area certificate, because it contemplates a franchise for the purpose of serving customers. *Id*.

The legislature further evidenced its intent to distinguish between the two types of CCN in Section 393.170.3 by use of the disjunctive "or" when discussing the Commission's power to grant the permission and approval specified by the statute. Section 393.170.3 states, in relevant part, "[t]he commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction **or** such exercise of the right, privilege or franchise is necessary or convenient for the public service." (emphasis added).

The difference between the two types of certificates contemplated by Section 393.170 is also reflected in the distinct filing requirements for applications as promulgated by the Commission in 4 CSR 240-2.060 and 4 CSR 240-3.105. 4 CSR 240-2.060 contains the general requirements for applications to the Commission. This general provision is qualified by 4 CSR 240-3.105, which contains the specific filing requirements for applications of convenience and necessity: 4 CSR 240-3.105(1)(A) sets forth the requirements for applications for an area certificate under Section 393.170.2; and, 4 CSR 240-3.105(1)(B) contains separate filing requirements for an application for a line certificate under section Section 393.170.1. The Commission has discretion to create its own procedural rules. Once the Commission exercises its discretion to promulgate its own rules, we give deference to its interpretation of such

regulations. *Matter of Verified Application and Petition of Laclede Gas Co.*, 504 S.W.3d 852, 859 (Mo. App. W.D. 2016).

In addition, case law has consistently acknowledged the existence of two separate types of CCN under Section 393.170. *See State ex rel. Cass County*, 259 S.W.3d at 548-49 (approval granted under Section 393.170 is of two types); *Stopaquila.Org v. Aquila, Inc.*, 180 S.W.3d 24, 33 (Mo. App. W.D. 2005) (certificate authority is of two types); *State ex rel. Union Elec. Co.*, 770 S.W.2d at 285-86 (statute contemplates two types of certificate authority); *State ex rel. Harline*, 343 S.W.2d at 185 (contemplating certificate authority of two kinds from two sources).

III. The Grain Belt Application

In the present case, it is undisputed Grain Belt applied for a line certificate pursuant to Section 393.170.1. This request is distinguished from an application under Section 393.170.2, which contemplates an area certificate. As discussed above, the two separate types of CCN contemplated by Section 393.170, as well as 4 CSR 240-3.105 and relevant precedent have different requirements based upon the resulting impact on the public. In order for a utility to exercise the rights and privileges of a franchise under Section 393.170.2, an area certificate requires an additional layer of oversight by the proper municipal authorities prior to approval by the Commission not required for a line certificate. "A Commission [area] certificate becomes an additional condition imposed by the State on the exercise of a privilege which a municipality or county may give or refuse under its delegated police power." *State ex rel. Union Elec. Co.*, 770 S.W.2d at 286.

IV. The Commission's Decision

Grain Belt presents a simple issue to this court. Our sole determination is whether the Commission erred in denying Grain Belt's application for a line certificate of convenience and

necessity on the basis of the Western District's decision in *ATXI*.[3] Grain Belt specifically sought a line CCN, not an area CCN, in this case. However, the Commission concluded the Western District's decision in *ATXI* precluded a line CCN absent the required proof of consent from the affected counties.[4] However, preliminary county assent is irrelevant to any CCN application for a Section 393.170.1 line certificate, and as a result, we find *ATXI* was wrongly decided.

In *ATXI*, the Commission issued a conditional report and order, granting Ameren Transmission Company of Illinois ("Ameren") a certificate of convenience and necessity to construct a long-distance electric transmission line contingent upon receipt of the required county consents. *ATXI*, 523 S.W.2d at 23. The Western District held the Commission did not have the statutory authority to grant a conditional CCN because according to Section 393.170.2 the utility seeking the CCN was required to obtain consent from the relevant county before the Commission could grant the CCN. *Id.*

Under the auspices of the rules of statutory interpretation, the *ATXI* court concluded the "harmonization of the statute preserves the integrity of both subdivisions of section 393.170 and effectuates the plain meaning of the statute." *ATXI*, 523 S.W.3d at 26. We agree it is a fundamental rule of statutory interpretation that our court determines the intent of the legislature by considering the words used in a statute in their plain and ordinary meaning. *ATXI*, 523 S.W.3d at 26 (internal citations omitted); *See also State ex rel. Union Elec. Co.*, 399 S.W.3d at

[3]We note the CCN applications, in both *ATXI* and this matter, are cases of first impression because the Commission's decisions were premised solely upon issuing a line CCN without reference to an area CCN. In addition, the *ATXI* record is unclear whether or not Ameren specifically applied for a line CCN, as did Grain Belt. However, we note Ameren requested a CCN to "construct a long distance electric transmission line." *ATXI*, 523 S.W.3d at 23. Therefore, the requested CCN clearly falls under a line certificate contemplated by Section 393.170.1.

[4] During oral argument, the parties extensively discussed and were subsequently granted leave to brief the issue of whether the municipal authority required under Section 393.170.2 for an area CCN included the consent of the relevant county commission. However, this issue is irrelevant in the present case because Grain Belt specifically applied for a line CCN under Section 393.170.1.

479-80. If the legislature's intent is clear by giving the statutory language its ordinary meaning, we are bound by that intent and do not resort to statutory construction to interpret the statute. *Id.* (citing *Goerlitz v. City of Maryville*, 333 S.W.3d 450, 455 (Mo. banc 2011) (quoting *Scott v. Blue Springs Ford Sales, Inc.*, 215 S.W.3d 145, 166 (Mo. App. W.D. 2006)). However, most importantly, we presume the legislature intends a logical result and does not enact legislation that would result in meaningless provisions. *State ex rel. Ozarks Border Elec. Co-op v. Public Service Comm'n*, 924 S.W.2d 597, 600, 601 (Mo. App. W.D. 1996) (internal citations omitted).

The *ATXI* decision focuses solely on the language contained in Section 393.170.2 concerning an area CCN, thereby overlooking the clear legislative purpose of the Commission. *See State ex rel. Cass County*, 259 S.W.3d at 549 (Commission does not consider the local operating area in isolation when balancing interests of the general public with those of the utility). This interpretation empowers a local entity to withhold its consent and prevent the Commission from issuing a CCN. The delegation of this power effectively nullifies Section 393.170.1, by conflating its provisions with those in Section 393.170.2. In addition, the *ATXI* decision renders the use of the disjunctive "or" in Section 393.170.3 meaningless. Finally, *ATXI*'s interpretation ignores the regulations promulgated by the Commission pursuant to its statutory authority to award either a line or an area CCN.

In addition, *ATXI* fails to cite any authority to justify its interpretation of Section 393.170 and abrogates precedent setting forth a distinction between a line CCN and an area CCN. *See State ex rel. Cass County*, 259 S.W.3d at 548-49 (approval granted under Section 393.170 is of two types); *Stopaquila.Org.*, 180 S.W.3d at 33 (certificate authority is of two types); *State ex rel. Union Elec. Co.*, 770 S.W.2d at 285-86 (statute contemplates two types of certificate authority);

State ex rel. Harline, 343 S.W.2d at 185 (contemplating certificate authority of two kinds from two sources).

Based upon the foregoing statutory and case law analysis, we conclude the *ATXI* court improperly requires every CCN applicant to acquire local consent as required for an area CCN under Section 393.170.2, even if the applicant is solely seeking a line CCN pursuant to Section 393.170.1. *ATXI*, 523 S.W.3d at 26.

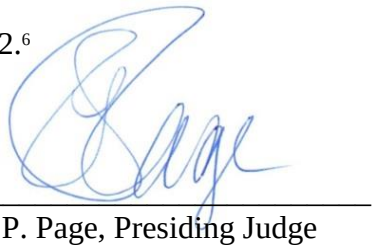
We find the legislature clearly and plainly contemplated two separate certificates of convenience and necessity under Section 393.170 by setting each forth in its own subsection and by use of the disjunctive "or" in Section 393.170.3. In addition, the separate regulations promulgated by the Commission contemplate two distinct filing requirements for each type of application for a CCN and the Commission's interpretation of these regulations is entitled to deference. *See Matter of Verified Application and Petition of Laclede Gas Co.*, 504 S.W.3d at 859. Moreover, our interpretation is consistent with prior case law. Thus, we must decline to follow the Western District's interpretation of Section 393.170.

CONCLUSION

The Commission erred in finding it could not lawfully grant a line CCN to Grain Belt under Section 393.170.1 based upon the decision in *ATXI*. We would reverse the Commission's order denying Grain Belt's application for a line CCN under Section 393.170.1 and remand to the Commission for further proceedings consistent with this opinion.[5] However, because of the

[5]In its reply brief, Grain Belt asserts we should remand with instructions to enter an order consistent with the Commission's concurring opinion in this case. However, according to Section 386.510, we may only either affirm or set aside, in whole or in part, orders or decisions of the Commission. This court "has no authority to direct the Commission what order to make." *State ex rel. GTE N., Inc. v. Missouri Pub. Serv. Comm'n*, 835 S.W.2d 356, 362 (Mo.App. W.D. 1992) (quoting *State ex rel. Anderson Motor Serv. Co. v. Pub. Serv. Comm'n*, 134 S.W.2d 1069, 1076 (1939)).

general interest or importance of the question involved in the present case, we order this case transferred to the Missouri Supreme Court pursuant to Rule 83.02.[6]



Lisa P. Page, Presiding Judge

Lawrence E. Mooney, J., and
Roy L. Richter, J., concur.

[6]MLA has filed separate motions to strike portions of both Grain Belt and MJMEUC's reply briefs. MLA's motions to strike portions of Grain Belt and MJMEUC's reply briefs are denied.