

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

**In the Matter of the Application of Grain)
Belt Express Clean Line LLC for 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

**RESPONSE OF GRAIN BELT EXPRESS
TO AGENDA DISCUSSION OF NOTICE REGARDING CASE STATUS**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) states the following in response to the discussion of the proposed Notice Regarding Case Status that was set forth as item No. 4 on the Commission’s May 24, 2017 Agenda and subsequently withdrawn:

1. During its May 24 Agenda meeting, the Commission discussed a proposed notice regarding the status of this proceeding in light of the recent Court of Appeals decision and the applications for transfer that the Commission and Ameren Transmission Company of Illinois (“ATXI”) have filed at the Missouri Supreme Court. See *Neighbors United Against Ameren’s Power Line v. PSC*, No. WD 79883 (Mo. App. W.D., Mar. 28, 2017), *applications for transfer filed*, No. SC96427 (Mo., May 16, 2017) (“Neighbors United”). Although the Chairman withdrew the proposed notice from the Agenda, several Commissioners commented on how the Neighbors United appeal might affect this case.

2. In light of those comments, Grain Belt Express respectfully offers its view and requests that the Commission proceed to determine whether to grant the Company’s Application for a Certificate of Convenience and Necessity (“CCN”) regardless of the Neighbors United appeal.

3. The appellate litigation in Neighbors United presents no procedural or substantive impediment to the Commission reaching a decision here. More importantly, if the Commission fails to issue a timely decision, it could have the practical effect of denying the Application because any substantial delay will disrupt the commercial arrangements now in place to support the construction and operation of the Grain Belt Express Transmission Project (“Project”).

4. Section 386.040 states that the Commission was established with “all powers necessary or proper to enable it to carry out fully and effectually all the purposes” of the Public Service Commission Law. The statutory imperative for the PSC to act “fully and effectually” in this case is particularly compelling, given that this Application has been pending for almost a year.

5. The Commission should adhere to the decision of its Order Denying Motion to Dismiss or Hold Case in Abeyance (April 3, 2017), where it found no procedural basis to halt this proceeding, given that no mandate had been issued by any court in Neighbors United and the case was not final. That finding is still valid, despite the Court of Appeals’ refusal to grant rehearing or transfer on May 2, 2017. Furthermore, as the Commission concluded in its April 3 Order, this case should be decided while the evidence is fresh in the minds of the Commissioners.

6. Beyond the fact that this proceeding is procedurally ripe for decision, there are important substantive distinctions between the Neighbors United case, where the CCN was requested pursuant to the general authority of Section 393.170, and the Application in this case, where a “line” CCN was specifically requested under Section 393.170.1 to construct the Project. Compare Application at 1 (May 29, 2015) & Report & Order at 5, In re Ameren Trans. Co. of

Ill., No. EA-2015-0146 (Apr. 27, 2016) with Application, Preamble & ¶ 1 at p. 1, In re Grain Belt Express Clean Line LLC, No. EA-2016-0358 (Aug. 30, 2016).

7. Moreover, the Court of Appeals decision that reviewed the ATXI Application was not based on Section 393.170.1, but on Section 393.170.2. That provision relates to an “area” CCN to provide retail service, not a “line” or construction CCN under subsection 1. See Neighbors United, slip opin. 7-8 (holding “the general provision of section 393.170.3 gives way to the more specific and mandatory language of section 393.170.2”). The latter section regarding the granting of an “area” certificate to provide retail service has nothing to do with this proceeding.

8. The Commission’s Application for Transfer in Neighbors United properly reminded the Supreme Court of the important distinction between a Section 393.170.1 line certificate to construct a plant or a transmission line, and a Section 393.170.2 certificate to provide service to a geographic area. “The two types of authority available under Section 393.170 are not the same and may not be used interchangeably. ... The distinction between the two kinds of authority is often blurred, but the courts have found that the distinction must be maintained.” See Application for Transfer at 4, *citing* Union Elec. Co. v. PSC, 770 S.W.2d 283, 285 (Mo. App. W.D. 1989). Accord State ex rel. Cass County v. PSC, 259 S.W.3d 544, 549 (Mo. App. W.D. 2008) (§ 393.170.1 line certificates grant permission “to build transmission lines or production facilities”). The Commission rightly concluded that where a construction certificate is requested under subsection 1, it “is inappropriate for the Court of Appeals to apply the subsection 2 local municipal authority provision” and that a county’s assent to cross roads under Section 229.100 is not a prerequisite to granting a CCN application. See Application for Transfer at 5, 9-10, No. SC96427, Neighbors United (May 16, 2017). The Company agrees with

the Commission that it may condition the CCN upon a utility obtaining such county assents before beginning construction. Id. at 5.

9. Given the Commission's firm and correct stand in its Application for Transfer, and the distinctions between this proceeding and the Neighbors United case, there is no basis for the Commission to delay action here. Holding this case in abeyance or otherwise not proceeding to issue a decision would show a lack of confidence in the Commission's application for transfer in the ATXI appeal, where the Commission steadfastly adhered to its view of the law that the receipt of county road-crossing assents under Section 229.100 is not a prerequisite to the Commission granting a CCN.

10. Any significant delay in issuing a decision could be a de facto denial of the Company's Application. The failure of the Commission to issue a timely decision will not only increase the cost of the Project, but will materially prejudice Grain Belt Express, the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), Infinity Wind Power and other wind generators that wish to transmit energy on the Project, as well as other parties.

11. Grain Belt Express must invest tens of millions of dollars in engineering, environmental permitting, and easement acquisition to continue to develop the Project. The Company's ability to make this investment is severely limited by the present state of regulatory uncertainty in Missouri. If the Commission grants a CCN in this proceeding, that uncertainty will disappear and Grain Belt Express will continue to develop the Project. While parties opposed to the Project may appeal such a decision because of the lack of certain county assents, planning for the Project can continue. Because the Company has agreed that the Commission may condition the CCN to provide that Grain Belt Express will not begin construction until it has obtained all Section 229.100 county assents, no party will be prejudiced.

12. Furthermore, wind generators must make substantial capital commitments in 2017 to begin construction on their wind farms in order to qualify for the currently available value of the federal production tax credit. Because that value will decline in 2018, a lower production tax credit will increase the cost that Missouri utilities pay for power delivered by the Project. Without an order granting Grain Belt Express a CCN, regulatory uncertainty will continue and wind generators will be reluctant to make the necessary investments that can lower costs for Missouri utilities and their customers. Further delay will also jeopardize the commitments that the Company has made to use numerous Missouri companies to manufacture equipment for the Project, as well as to construct the Project, including ABB Inc., General Cable Industries, Hubbell Power Systems, and PAR Electrical Contractors.

13. The parties are entitled to receive a decision by the Commission. Whether that decision grants or denies the Application, the parties and the public at large deserve to know whether the Commission believes that Grain Belt Express has met the Tartan criteria, and if it has, what conditions should govern the CCN. Any significant delay in the Commission coming to a decision benefits no one.

WHEREFORE, Grain Belt Express Clean Line LLC requests that the Commission determine the issues in this proceeding and issue a Report and Order in a timely manner.

Respectfully submitted,

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record in this case on June 1, 2017.

/s/ Karl Zobrist

Attorney for Grain Belt Express Clean Line LLC