

**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

**SHOW ME CONCERNED LANDOWNERS'
POSITION STATEMENT**

COMES NOW the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners ("Show Me"), by and through its counsel and respectfully files its position statement.

1. Does the evidence establish that the Commission may lawfully issue to Grain Belt Express Clean Line LLC ("Grain Belt") the certificate of convenience and necessity ("CCN") it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?

No, for the following reasons:

1. The proposed transmission line is a "merchant" transmission line. The evidence establishes that the proposed line is not for the public use. Therefore, Grain Belt Express is not an electrical corporation under the Public Utility Commission Law. *State ex rel. Danciger v. Public Service Commission*, 205 S.W. 36 (Mo. 1918).

2. Grain Belt Express has not obtained the county assents as required by Section 229.100, RSMo (2000) and 4 CSR 240-3.105(1)(D)1.

2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a CCN are “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo.?

No. The evidence establishes that there is no need for the line. Transmission service is available through the existing transmission system operated by regional transmission operators. There is no need for the service that cannot be supplied by existing facilities and processes. Thus, the project would be destructive competition.

The Commission typically evaluates whether an application justifies a CCN under the rubric of the Tartan Factors.¹ Show Me will address each factor below.

1. There must be a need for the service;

There is no need for the Grain Belt Express Line. There are no requests for service that constitute a need under the Missouri Public Utility Commission Law.

The Commission may not or should not consider the transmission service agreement between Grain Belt Express and MJMEUC for the following reasons:

- a. The MJMEUC is a body corporate and politic of the State of Missouri, organized as a joint municipal utility commission pursuant to RSMo Sec. 393.700 et seq., with authority to exercise the public powers of a political subdivision of the state for the benefit of the inhabitants of municipalities jointly contracting to establish the MJMEUC. The MJMEUC TSA is an interstate transmission service agreement with an entity for which the Commission has no authority to regulate. The 67 MJMEUC

¹ *In re Tartan Energy Co.*, 3 Mo P.S.C. 173, 177 (1994).

member municipalities are presently being adequately served by MJMEUC. The Commission has held that when the public is being adequately served by an unregulated entity it will not grant a CCN. *In the matter of The Empire District Electric Company*, 9 Mo. P.S.C. (N.S.) 349 (1960).

- b. MJMEUC is not obligated to take service under the TSA. The MJMEUC TSA presents no legitimate need for the project.
- c. The only justification GBX identifies with MJMEUC is the attractive price of the TSA and PPA. A price advantage alone is not a need sufficient to grant a CCN. "Public convenience and necessity is not proven merely by the desire for other facilities." *People's Tel. ex. v. Pub. Serv. Com. & Hanamo Tel.*, 186 S.W.2d 531, 239 Mo.App. 166 (Mo. App., 1945).

- 2. The applicant must be qualified to provide the proposed service;

Show Me takes no position on this point.

- 3. The applicant must have the financial ability to provide the service;

Show Me takes no position on this point.

- 4. The applicant's proposal must be economically feasible; and

The Grain Belt Express proposal is not economically feasible. The evidence is clear that this is a risky financial undertaking. The "merchant" character of the project makes it speculative at best. While the MJMEUC rate may be attractive to MJMEUC, "At its 'normal' cost-based rate, the GBX transmission project is clearly not economically viable." Surrebuttal

Testimony of Paul Glenden Justis, Jr., p. 11, lines 8, 9.

- 5. The service must promote the public interest.

The service will not promote the public interest. The greatest public interest is the protection of property rights. Further, the responsibility of this Commission and the reason this Commission was created is to protect the public and landowners against destructive competition. Against these fundamental public interests, Grain Belt Express only offers up cheaper power to one entity, a short uptick in jobs during construction of the project, and additional tax revenue for the state, the last two of which are of questionable value. These short-term benefits fail to outweigh the long-term harm the line would do to the property owners of the state in the diminution of land values and hindering the economic development opportunities of the landowners.

3. If the Commission grants the CCN, what conditions, if any, should the Commission impose?

In the event the Commission grants the CCN, Show Me supports all the proposed conditions of Staff, with the following elaborations, additions and modifications.

1. The Commission should condition the grant of the CCN upon GBX not attempting to condemn land using the power of eminent domain. As a “merchant,” GBX should have no authority to use the power of the state to condemn land.
2. The Commission should impose a condition on GBX in the CCN that GBX comply with the Missouri Agricultural Impact Mitigation Protocol (Schedule JLA-2) and the Agricultural Impact Mitigation Policy (Schedule JLA-3). GBX relies on these two documents to assure the Commission that they will attempt to minimize harm to landowners. GBX has already committed to make these two documents attachments to any easement agreement. (Surrebuttal Testimony of Deann Lanz, p. 5, lines 19-20) The policy and protocol apply to

activities and conduct occurring prior to entering an easement agreement. It is also not clear how they would apply in the event land is condemned. To make the policy and protocol fully binding on GBX to achieve the full benefit GBX claims, they should be made conditions of the CCN.

3. Show Me proposes that contributions to the decommissioning fund begin prior to commencement of construction. As a “merchant” transmission project, this project is different from any other transmission project in the state. As a “merchant” transmission project, the risk is undoubtedly greater for abandonment during the construction phase than a utility transmission project. Therefore, the landowners should be protected against such abandonment during the earliest stages of the project, during construction.

4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 3.190(1), (2) and (3)(A)-(D)?

No. The principles undergirding the regulatory compact dictate that a public utility, in exchange for receiving certain rights, such as the right to an exclusive service territory, the right to a reasonable opportunity to receive a return on investment, and the right to condemn land, must subject its investments to the regulatory oversight of the state. This balance of rights and responsibilities should not be ignored based on a unique request. If an entity seeks the

advantages of the regulatory regime, the state must guard its citizens against the abuses of those advantages through the regulatory process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Compel was sent to all parties of record in File No. EA-2016-0358 via electronic transmission this 13th day of March, 2017.

/s/ David C. Linton