

Exhibit No. _____
Issues: County Assents, Economic Benefits,
Public Outreach, Property Rights
Witness: Mark Lawlor
Type: Surrebuttal Testimony
Sponsoring Party: Grain Belt Express Clean Line LLC
Case No.: EA-2016-0358
Date Testimony Prepared: February 21, 2017

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2016-0358

SURREBUTTAL TESTIMONY OF

MARK O. LAWLOR

ON BEHALF OF

GRAIN BELT EXPRESS CLEAN LINE LLC

February 21, 2017

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1 **I. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. Please state your name, present position, and business address.**

3 A. My name is Mark O. Lawlor. I am Director of Development for Clean Line Energy
4 Partners LLC (“Clean Line”). Clean Line is the ultimate parent company of Grain Belt
5 Express Clean Line LLC (“Grain Belt Express” or “Company”), the Applicant in this
6 proceeding. I am based in the Kansas City metropolitan area, but my business address is
7 1001 McKinney Street, Suite 700; Houston, TX 77002.

8 **Q. Have you previously submitted prepared testimony in this proceeding?**

9 A. Yes, I submitted direct testimony on August 29, 2016.

10 **Q. What is the subject matter of this surrebuttal testimony?**

11 A. I am responding to the rebuttal testimony of certain witnesses who address subject matter
12 in my direct testimony, as well as certain conditions proposed by Public Service
13 Commission (“PSC”) Staff.

14 **II. RESPONSE TO PSC STAFF**

15 **Q. What is your response on the Staff’s position that Grain Belt Express must have**
16 **county assents before the Commission can issue the certificate?**

17 A. Staff’s position would give county commissions a de facto veto power over policy
18 decisions that the Missouri legislature clearly granted to the Missouri Public Service
19 Commission. The commission rejected this position in the ATXI case.¹ The Commission
20 should follow its own precedent in rejecting this position.

21 **Q. Mr. Stahlman “cautions the Commission in its consideration of this [employment**
22 **and tax revenue] information as a basis to approve or reject Grain Belt’s**
23 **application” on page 41 of Staff’s Rebuttal Report. Can economic data be relied on**

¹ Report and Order, Docket No. EA-2015-0146, p. 38.

1 **by the Commission in weighing the impacts to the public interest and economic**
2 **feasibility of the Project?**

3 A. Yes. Missouri agencies, legislators and policy makers have relied on similar economic
4 data for many years in crafting public policy.

5 Missouri Department of Economic Development (“DED”) witness Alan Spell
6 concluded, “[t]he construction and operation of the Project is expected to have positive
7 economic impacts to the state of Missouri with regard to jobs, income, gross domestic
8 product, and tax revenues.” This conclusion was based on the use of a detailed industry-
9 standard model that produces reliable estimates of economic benefits. In the rebuttal
10 testimony of Alan Spell, on page 5, he explains:

11 The REMI model has been used by DED for over fifteen years to estimate
12 the impacts of business activities. REMI is a popular model with over 250
13 organizations, universities, and consulting firms using the system,
14 including governmental agencies in 40 states. Many organizations use
15 models like REMI as a tool in analyzing the potential economic benefits
16 and costs associated with a business activity while recognizing that it is
17 one part of a decision-making process.
18

19 **Q. Staff witness Michael Stahlman on pages 41-42 of Staff’s Rebuttal Report expresses**
20 **concern about viewing increased employment and tax revenue as an economic**
21 **benefit of the Project because of possible “opportunity costs.” What are the**
22 **opportunity costs for the Missouri economy if the Grain Belt Express Project is**
23 **built?**

24 A. Opportunity costs are those economic activities that did not happen because a project
25 went forward. Here, there are no opportunity costs in the Missouri economy for building
26 the Project. If the same capital that will be used to build the Grain Belt Express Project is
27 deployed to another project, it is highly unlikely that such investment will be in Missouri

1 or that any of the alternative project's benefits will accrue to Missouri residents. Staff
2 does not justify its concern with opportunity cost with any specific evidence or analysis,
3 because there is none.

4 **Q. Has Grain Belt Express presented evidence that clearly rebuts Staff's concerns**
5 **regarding the economic benefits of the Project to the State of Missouri?**

6 A. Yes. The Grain Belt Express Project will directly cause manufacturing opportunities in
7 Missouri that would not occur without the Project. For example, Hubbell Power Systems
8 will invest over \$9 million in its Centralia, Missouri plant if allowed to commence work
9 supplying the Grain Belt Express Project with component parts. The partnership between
10 Grain Belt Express and Hubbell will create an estimated 52 additional jobs at the
11 Centralia facility for two to three years. These jobs will only be created if the Project can
12 proceed. See Schedule MOL-8 attached to my direct testimony and **Schedule MOL- 12**
13 to my surrebuttal.

14 **Q. On page 42 of his testimony, Staff witness Michael Stahlman states that wages and**
15 **taxes are part of the Project's cost, not benefits, since these expenditures increase**
16 **the rate for the service, reducing the marginal benefit to Missouri customers of**
17 **taking service on the Project. What is your response to this?**

18 A. Mr. Stahlman's position may be applicable to a cost-of-service rate-regulated utility
19 seeking to recover the cost to construct a project in Missouri. However, Grain Belt
20 Express has not asked the Commission to set a rate based on the cost to serve Missouri
21 rate-payers. Rather, the market will determine the negotiated rate and Clean Line's
22 investors will bear the risk and the cost to construct the Project. and recover that
23 investment from subscribers to the line.

1 Further, the vast majority of the service will be paid for by non-Missourians under
2 negotiated rates. Therefore, wages and taxes paid in Missouri are a direct benefit to
3 Missourians, and while they are a cost of the Project, these costs are spread over all the
4 customers in all states and recovered under negotiated rates.

5 Mr. Stahlman appears to suggest on page 42 that the economic benefits analysis
6 should also include the follow-on effect of the Project on Missouri electric rates. There
7 are no Project costs directly recovered from Missouri rate-payers, but there will be net
8 benefits from subscribing to the Project or buying the Project's delivered energy. For
9 example, the Missouri Joint Municipal Electric Utility Commission (MJMEUC) has
10 estimated \$10 million in annual savings to MJMEUC members through utilizing 200
11 MW of capacity from Grain Belt Express (See page 5 of the Rebuttal testimony of John
12 Grotzinger).

13 III. PUBLIC COMMENTS

14 **Q. Staff witness Robert Shallenberg, on page 62 Staff's Rebuttal Report, states that**
15 **some "individuals assert they did not submit or authorize the submittal" of public**
16 **comments. What is your response to this observation?**

17 A. In cases where Grain Belt Express collected and uploaded letters of support to the
18 Commission's EFIS public comment portal, those letters were submitted with the
19 knowledge and permission of the individual commenter. Each letter of support contains a
20 section where the signatory granted the Company the authority to submit the letter on his
21 or her behalf.

1 better methods of preventing regrowth from stumps than chemical treatment.
2 Additionally, there may be state or federal laws and regulations that impact the use of
3 chemical treatment in certain circumstances.

4 Grain Belt Express requests the removal of Condition 3 in Section V
5 (Construction and Clearing) in Schedule DAB-9 on the grounds that it is not reasonable
6 to require a foreman to be a certified arborist. This practice is unnecessary and likely
7 impossible to comply with. While the Company will utilize certified arborists in the
8 development of the TVMP, it is not reasonable to require a foreman to be a certified
9 arborist. The spirit of this recommendation can be met through the TVMP, which will
10 address right-of-way maintenance in a comprehensive manner.

11 Grain Belt Express recommends that Condition 7 in Section V (Construction and
12 Clearing) in Schedule DAB-9, which states:

13 Unless the landowner does not want the area seeded, disturbed areas will
14 be reseeded with a blend of K31 fescue, perennial rye, and wheat grasses,
15 fertilized, and mulched with straw.

16 be modified to state:

17 Unless the landowner does not want the area seeded, disturbed areas will
18 be reseeded consistent with reclamation best practices in consultation with
19 landowners, restoration specialists, and government agencies.

20 This modification is needed because, while the use of the suggested seed mix may be
21 common along roads and highways, it may not be appropriate in all sections of the
22 Project's right-of-way. Reseeding and other reclamation procedures will be addressed in
23 the post-construction Restoration Plan. The Company will coordinate with landowners,

1 restoration specialists, state and federal agencies, and others on the appropriate
2 reclamation practices that best fit the specific conditions of each parcel on the right-of-
3 way.

4 Grain Belt Express recommends Condition 7 in Section VI (Maintenance and
5 Repair) in Schedule DAB-9, which states:

6 Prior to commencing any vegetation management on the right-of-way,
7 Grain Belt will meet personally with all landowners to discuss Grain
8 Belt's vegetation management program and plans for their property, and to
9 determine if the landowner does or does not want herbicides used on their
10 property. If the landowner does not want herbicides used, they will not be
11 used.

12 be modified to state:

13 Prior to commencing construction, Grain Belt Express will notify all
14 landowners in writing of the Transmission Vegetation Management Plan
15 and of the specific vegetation treatments for each landowner's property.
16 The Company will personally meet with each landowner who requests
17 such a meeting to determine if the landowner does or does not want
18 herbicides used on their property. If the landowner does not want
19 herbicides used, they will not be used.

20 This modification is necessary to avoid ambiguity regarding if and when such a meeting
21 is to take place, and allows compliance even if a landowner does not want to meet in
22 person. It also provides for flexibility to follow and apply the Transmission Vegetation
23 Management Plan.

1 **V. RESPONSE TO WITNESSES JASKULSKI, SHAW, AND JUSTIS**

2 **Q. Joseph Jaskulski, Donald Shaw, and Paul Justis criticize the Transmission Service**
3 **Agreement (“TSA”) between Grain Belt Express and MJMEUC as having “no real**
4 **economic value” because it is “an option contract.” How do you respond to this?**

5 **A.** First, MJMEUC has a specific need for this Project and has fully incorporated the
6 agreement into their future power supply. This is supported by the large number of
7 municipal utilities participating in the TSA (see rebuttal testimony of Duncan Kincheloe
8 on page 4 starting at line 12) because the alternatives to the TSA are significantly more
9 costly.

10 Second, the Power Purchase Agreement (“PPA”) MJMEUC signed with Infinity
11 is in fact a binding contract (See Schedule JG-4 to Mr. Grotzinger’s rebuttal testimony).
12 When construction of the Grain Belt Express is complete, MJMEUC will be contractually
13 obligated to take delivery of the energy under the PPA. So, while the TSA provides
14 MJMEUC with optionality, MJMEUC has already acted to take advantage of those
15 options by securing low-cost wind energy from Infinity.

16 Third, flexibility under the TSA is necessary because, until Grain Belt Express
17 receives approval in this docket, its schedule and viability remain uncertain. Even after
18 receiving approval by this Commission, flexibility will be necessary for both parties, as is
19 the case with all large-scale infrastructure projects. Without provisions that allow for this,
20 parties could be locked into an agreement in which they are physically and legally
21 prohibited from performing if regulatory approvals are not granted.

22 The notion that the TSA has no real economic value ignores the tremendous
23 savings MJMEUC members will realize once the Project is in operation. When

1 MJEMEUC announced the execution of the TSA in June 2016, they publicized the fact
2 that the TSA will save their members approximately \$10 million annually. The testimony
3 and schedules of MJMEUC witness John Grotzinger confirm and detail the extraordinary
4 economic benefits that MJMEUC and its members will receive under the TSA with Grain
5 Belt Express.

6 **VI. RESPONSE TO HIBBARD**

7 **Q. On page 4 of his testimony, Wiley Hibbard raises concerns regarding notification of**
8 **the public meeting in Monroe City. What efforts did Grain Belt Express make**
9 **regarding the location and notification of public meetings to Ralls County**
10 **landowners and community members along the route?**

11 A. As I discuss in Section III of my direct testimony, Grain Belt Express mailed all
12 landowners invitations to the open house meetings. On July 31, 2013, there were 113
13 members of the public in attendance at the Monroe City open house, one of the highest
14 attendance levels of the open house meetings held by Grain Belt Express across the
15 Project area. The meetings were also advertised in local papers with county-wide
16 distribution starting two weeks prior to the actual meetings.

17 **VII. RESPONSE TO GARVIN**

18 **Q. In his rebuttal testimony, Mr. Garvin raised routing concerns with the proposed**
19 **Chariton –I reroute presented at the June 2016 public meetings and described in**
20 **Schedule JGP-2. What did Grain Belt Express do in response to those concerns?**

21 A. After discussing these concerns with Mr. Garvin at the public meeting, the reroute was
22 further adjusted to accommodate for Mr. Garvin’s concerns. The route was moved to
23 avoid potential cemeteries, to avoid his daughter’s future home site, and to be farther

1 from Mr. Garvin's home. The route was adjusted in such a way that utilizes the terrain
2 and existing trees to further limit the visual impact to Mr. Garvin.

3 **Q. Mr. Garvin cited concerns that the location of the proposed route would result in**
4 **forested habitat loss due to the removal of timber. What actions were taken in siting**
5 **the route to minimize habitat loss and impacts to protected species?**

6 A. Minimizing impacts on sensitive habitats and protected species was an important criteria
7 for routing the project. The routing team ultimately identified a route with the least
8 amount of potential habitat within the right of way. See the Missouri Route Selection
9 Study, Schedule JPG-1 to Jay Puckett's direct testimony.

10 **VIII. RESPONSE TO LOWENSTEIN**

11 **Q. MLA witness Donald Lowenstein challenges the estimated property tax payments**
12 **referenced in your direct testimony. Do you agree with Mr. Lowenstein's analysis?**

13 A. No. While Mr. Lowenstein acknowledges on page 8 of his rebuttal testimony that he is
14 not an expert on property tax and "will not be rendering any opinion here as a tax expert,"
15 he proceeds with over 20 pages of testimony attacking the formula used to estimate these
16 taxes, which were calculated with the aid and consultation of the Missouri State Tax
17 Commission ("MSTC").

18 Mr. Lowenstein's description of how the MSTC will value the line is nothing
19 more than a statement that the MSTC will follow state law in its valuation. (Lowenstein
20 Rebuttal, page 12.) Mr. Lowenstein offers no argument that the methodology employed
21 by Grain Belt Express in consultation with the MSTC is inaccurate or flawed.

1 **Q. Mr. Lowenstein questions the approach that was used to calculate these tax**
2 **revenues. Why was the cost-approach method chosen to estimate the tax revenues in**
3 **the first year of the Project's operation?**

4 A. As Mr. Tregnago states in his surrebuttal testimony, it is common practice in Missouri to
5 use the cost-approach method, as it provides a reasonable estimate in calculating future
6 property tax revenues. Grain Belt Express worked with the MSTC to develop these
7 estimates. The MSTC reviewed and advised the tax estimates for the Project, just as they
8 have done for other infrastructure projects in the state for many years.

9 **Q. Mr. Lowenstein suggests that there are other approaches and factors that will**
10 **change the overall assessed value of the Project over time, (pg. 13 lines 6 – 22). He**
11 **also states “It’s hard to speculate what trends exactly will affect GBE’s value in the**
12 **future,” (pg. 13, line 12), and “it is impossible to predict future property taxes to the**
13 **counties after the line is energized.” (DL – pg. 17, lines 3-4). How do you respond to**
14 **this?**

15 A. Grain Belt Express has never suggested that it is providing precise property tax numbers
16 to be paid during the multi-decade useful life of the Project. Instead, we used a simple
17 and reliable approach to estimate property tax payments in the Project's first year of
18 operation. Mr. Lowenstein is correct in stating that the MSTC may look at other criteria
19 to determine Grain Belt Express' property taxes going forward. However, he lacks any
20 data or evidence supporting his claims that additional information will result in lower
21 market value for the Project.

22 The MSTC can also use an income approach and market approach to determine
23 the fair market value of the Project. I believe these additional approaches are likely to

1 increase the fair market value of the Project rather than decrease it, thus increasing the tax
2 revenue contributed to local communities.

3 **Q. On pg. 16 of Mr. Lowenstein’s rebuttal testimony, he claims different school**
4 **districts on or near the line receive varying percentages of “substantial benefits,”**
5 **“modest benefits,” and “negligible benefits.” Does he explain how he came to this**
6 **conclusion or what these terms mean?**

7 A. No. In fact, when given the opportunity to explain his reasoning and to provide a
8 numerical value to explain these assertions, his response was “I prefer to look at
9 percentages and ratios and scenarios.” See Lowenstein’s response to Grain Belt Express
10 Data Request 11.

11 Mr. Lowenstein’s attacks on Grain Belt Express reflect an apparent dispute that
12 he has with Missouri tax policy regarding certain school districts not receiving property
13 tax dollars during construction. This is a product of state tax law providing for county
14 level assessment during the construction phase. All school districts in every county where
15 the line is located will receive tax dollars once the line is operational.

16 **IX. RESPONSE TO VARIOUS WITNESSES**
17 **ON THE ISSUE OF EMINENT DOMAIN**

18 **Q. A number of witnesses discuss the issue of eminent domain in their rebuttal**
19 **testimony. What is the Company’s position on the use of eminent domain?**

20 A. Grain Belt Express intends to acquire the necessary right-of-way through voluntary
21 transactions negotiated in good faith and fair dealing. Based on feedback from
22 landowners and in the event such negotiations do not result in an agreement, Grain Belt
23 Express has committed to alternative dispute resolution in the form of binding arbitration
24 as a way to reach agreeable terms, as discussed in greater detail in the surrebuttal

1 testimony of Company witness Deann Lanz. This commitment to arbitration is not
2 required, or typical, for a transmission project, but will be of great value in reaching
3 agreeable terms with landowners. Grain Belt Express will only seek condemnation as a
4 last resort after exhausting reasonable efforts to secure easements voluntarily or through
5 arbitration. In some limited circumstances, condemnation proceedings may be necessary
6 when a landowner cannot be located or to clear up a title issue.

7 Many statements from opposition witnesses lead me to believe they lack an
8 understanding of public utility and eminent domain law and history in Missouri.

9 All investor-owned public utilities operating in Missouri, such as Ameren and
10 Kansas City Power and Light, are investor-owned, for-profit businesses, like Grain Belt
11 Express. From time to time these investor owned utilities exercise their rights under
12 Missouri's eminent domain laws so that they can provide utility service. These investor-
13 owned utilities have been part of the public utility landscape in Missouri for over 100
14 years. Grain Belt Express is seeking the same opportunity to provide a public service to
15 the State of Missouri and beyond, just as those utilities do, under the laws and regulations
16 of the state.

17 **X. RESPONSE TO HURST**

18 **Q. On page 1 of his testimony, Blake Hurst states he is addressing Grain Belt Express'**
19 **assertion that the "use of eminent domain would serve the public interest." Please**
20 **respond.**

21 **A.** Grain Belt Express does not make this assertion. The Company is seeking a Certificate of
22 Convenience and Necessity ("CNN") in order to provide a public service. As this
23 Commission has made clear, such an application is *not* the same as granting eminent

1 domain. Mr. Hurst, as well as other witnesses, have conflated this proceeding seeking a
2 CCN with a condemnation proceeding. I refer Mr. Hurst and others to Section 393.170.1
3 of the Missouri Revised Statutes, and 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B) for
4 Certificate of Convenience and Necessity proceedings. Chapter 523 of the Missouri
5 Revised Statutes contains Missouri laws regarding eminent domain. These are two
6 distinct legal proceedings under Missouri law.

7 At the Missouri PSC, Grain Belt Express is seeking a CNN authorizing it to
8 construct, own, operate, control, manage, and maintain a high-voltage direct current-
9 transmission line and associated converter station in the state of Missouri, pursuant to
10 Section 393.170.1,² 4 CSR 240-2.060, and 4 CSR 240-3.105(1)(B). Should Grain Belt
11 Express need to pursue eminent domain in the future, it will do so pursuant to Chapter
12 523 of the Missouri Revised Statutes in a separate proceeding in a circuit court, under
13 different legal standards and procedures.

14 **Q. Mr. Hurst cites to a Farm Bureau policy stating, “we support Missouri’s eminent**
15 **domain reform law, which strengthens the protection of landowners from**
16 **condemnation with assurance that needed rural infrastructure such as roads, power**
17 **lines and water and sewer lines can be built in a timely and economical manner with**
18 **equitable compensation granted to all affected landowners.” (p. 2). Is this policy in**
19 **conflict with the proposed Project?**

20 A. No. I agree that needed infrastructure should be built in a timely and economic manner
21 with equitable compensation to all landowners.

22 **Q. In his testimony on page 3, Blake Hurst suggests that landowners should have five**
23 **years from the time of the original settlement in which to negotiate claims for**

² All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

1 **damage from construction and maintenance. Will Grain Belt Express comply with**
2 **such a request?**

3 A. Yes. In fact, under the Easement Agreement, there is no time limit on when claims for
4 damages can be made.

5 **Q: Does Mr. Hurst address the agreement with MJMEUC to provide service to**
6 **customers in the state?**

7 A: Yes, Mr. Hurst does not believe the estimated \$10 million dollars in annual savings by
8 Missouri municipalities is in the public interest. The testimony of Mr. Kincheloe and Mr.
9 Grotzinger explain just how significant these savings are, and how rare and unique this
10 opportunity is for Missouri customers.

11 **Q. Does this conclude your surrebuttal testimony?**

12 A. Yes it does.

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

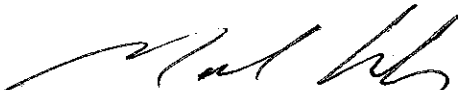
In the Matter of the Application of Grain Belt Express)
Clean Line LLC for a Certificate of Convenience and)
Necessity Authorizing it to Construct, Own, Control,) Case No. EA-2016-0358
Manage, Operate and Maintain a High Voltage, Direct)
Current Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

AFFIDAVIT OF MARK O. LAWLOR


STATE OF Texas)
COUNTY OF Harris) ss

Mark O. Lawlor, being first duly sworn on his oath, states:

1. My name is Mark O. Lawlor. I am Director of Development for Clean Line Energy Partners LLC.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Grain Belt Express Clean Line LLC consisting of 17 pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Mark O. Lawlor

Subscribed and sworn before me this 21st day of February, 2017.


Notary Public

My commission expires: 1/6/2018

