

**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

**GRAIN BELT EXPRESS STATEMENT OF POSITION  
REGARDING PROCEEDINGS ON REMAND AND RESPONSE  
TO THE COMMISSION'S ORDER SETTING PROCEDURAL CONFERENCE**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) submits this Statement of Position in Response to the Commission’s Order Setting Procedural Conference, as well as to the Motion of the Missouri Landowners Alliance (“MLA”) to Establish a Procedural Schedule. The Company urges the Commission to convene a hearing within the next 90 days and thereafter to promptly issue a line Certificate of Convenience and Necessity (“CCN”) to the Company under Section 393.170.1,<sup>1</sup> as requested in its Application.

In support of this request, Grain Belt Express states the following:

1. On July 17, 2018 the Missouri Supreme Court issued a unanimous per curiam opinion that reversed the Commission’s Report and Order denying the Company’s application for a line CCN under Section 393.170.1. Grain Belt Express Clean Line LLC v. PSC, 2018 WL 3432778, No. SC 96993 (Mo. en banc 2018) (“Grain Belt Express”). In particular, the Supreme Court ruled that the Commission’s reliance on In re Ameren Trans. Co. of Ill., 523 S.W.3rd 21 (Mo. App. W.D. 2017) (“ATXI”) was in error. The Supreme Court declared that ATXI “should not be followed” to the extent that case held that an applicant for a line CCN is required to obtain

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<sup>1</sup> All statutory references are to the Missouri Revised Statutes (2016), unless otherwise noted.

county consents under Section 229.100 before the Commission can grant a line CCN. See Grain Belt Express at 1, 4.

2. On August 1, 2018 the Missouri Landowners Alliance (“MLA”) filed a motion for rehearing under Missouri Rule of Civil Procedure 84.17(a), which was denied on August 21, 2018. The Supreme Court’s order formally remanding this case to the Commission was issued September 24, 2018.

3. This matter is now pending before the Commission for it to determine whether Grain Belt Express’s high-voltage, direct current transmission line and associated facilities designed to collect over 4,000 megawatts (“MW”) of low-cost, wind-generated power in western Kansas, and to deliver 500 MW of that power into Missouri and 3,500 MW into Illinois, Indiana, and states farther east (the “Project”) should receive a line CCN for its proposed facilities in Missouri.

4. The overall facts are substantially the same as the case that was pending before the Commission when it issued its Report and Order on August 16, 2017 and denied rehearing on September 19, 2017. The law has been clarified by the Supreme Court, and the legal impediment cited by four Commissioners in their Concurring Opinion of August 16, 2017 has been removed. The Concurring Opinion stated that but for the ATXI decision, “we would have granted the [Grain Belt Express] application as the evidence showed that the GBE project is ‘necessary or convenient for the public service.’” See Concurring Opinion at 2 (footnote omitted) (Aug. 26, 2017).

5. The Commission’s Order setting a procedural conference for October 11, 2018 correctly recognizes that the primary purpose of the schedule is “regarding the receipt of any evidence that has materially changed” since the filing of the Company’s direct case in 2016.

Such evidence was supplemented and updated by the Company in its surrebuttal testimony of February 21, 2017, as well as during the hearing conducted on March 20-24, 2017. That was where matters stood when the Commission issued its Report & Order and the Concurring Opinion in August 2017. While changes have occurred at Grain Belt Express and Clean Line Energy Partners LLC (“Clean Line”), they both stand ready to provide additional information regarding the material changes.

6. However, MLA now seeks to delay these proceedings by months, if not years, based on its view of proceedings that will occur in Illinois. See MLA Motion to Establish Procedural Schedule at 21 (filed Sept. 27, 2018) (“MLA Motion”).<sup>2</sup> As discussed below, Grain Belt Express is taking steps in Kansas and Illinois, as well as here in Missouri to move the Project ahead. No further steps need to be taken in Indiana. Given the length of time that this Application and the Project have been before the Commission, such a delay is unnecessary and should not be tolerated.

7. The Transmission Service Agreement between Grain Belt Express and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) remains in place, as does MJMEUC’s Power Purchase Agreement with Infinity Wind’s Iron Star Wind Project, LLC. The price of western Kansas wind energy continues to decline, and the cost of wind turbines continues to fall with advances in technology, as the demand for renewable energy from commercial, industrial and residential consumers increases.

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<sup>2</sup> MLA speculates that “any decision from the Illinois Commission will not likely come for at least another two years” and, therefore, “an immediate decision from the [Missouri] Commission in this case is far from urgent ....” See MLA Motion at 21.

**A. Procedural Schedule**

8. Given that the basic facts regarding the Project remain as they were when this case was submitted to the Commission in mid-2017, Grain Belt Express proposes the following schedule:

Supplemental Direct Testimony	November 12, 2018
Rebuttal Testimony	November 30, 2018
Evidentiary Hearing	December 13-14, 2018

9. Given the limited nature of this remand proceeding, the Company is willing to forego a round of surrebuttal testimony and address any questions raised in rebuttal testimony at the evidentiary hearing.

10. The Procedural Order should properly limit the scope of discovery in this remanded proceeding to material changes in the evidence that was before the Commission when it issued its Report & Order in August 2017. For example, there is no need for the major studies that were admitted into evidence to be re-done or be subject to further discovery. This would include the Levelized Cost of Energy analysis prepared by Company witness David Berry; the PROMOD economic study by Company expert J. Neil Copeland (GDS Associates, Inc.); or the Loss of Load Expectation analysis prepared by Company expert Edward C. Pfeiffer, P.E. (Quanta Technology, LLC). The Missouri Route Selection Study and its 2016 Addendum, prepared by Louis Berger Group, Inc., has not changed.

11. Because of the narrowed scope of this remand proceeding and the requested 90-day timeline, Grain Belt Express believes it would be appropriate that the response time for all data requests be shortened to 10 calendar days (from the normal 20-day period), and that the time

to object or notify that more than 10 calendar days will be needed to respond to a data request be shortened to 5 business days (from the normal 10-day period).

**B. Other Proceedings**

12. Since the Commission’s Report and Order of August 2017, the Illinois Appellate Court reversed the Illinois Commerce Commission’s 2015 decision that granted a certificate of public convenience and necessary to Grain Belt Express on procedural grounds. Concerned Citizens & Property Owners v. Illinois Commerce Comm’n, \_\_ N.E.3d \_\_, 2018 IL App. (5<sup>th</sup>) 150551 (Ill. App., Apr. 17, 2018). The Court held that while the Company owned an option to purchase property to be used for the transmission of electricity, it was required under Illinois law to “own, control, operate, or manage” utility infrastructure “at the time of application” before it could qualify as a “public utility,” and remanded the case to the Illinois Commission. The Appellate Court specifically found that applicants like Grain Belt Express “may seek recognition as a public utility while, at the same time, applying for a certificate of public convenience and necessity ... as long as they have obtained the ownership, management, or control of utility-related property or equipment at the time of the application.” Id. at \*5-\*7, citing Illinois Landowners Alliance v. Illinois Commerce Comm’n, 90 N.E.3d 448, 462 (Ill. 2017).<sup>3</sup> At the present time the Company is actively planning to acquire property in Illinois to be used for the transmission of electricity which will permit it to file a new application with the Illinois Commission.

13. In Kansas the Company has filed a Joint Motion with the Staff of the Kansas Corporation Commission (“KCC”) to extend for another five years the siting order that the KCC

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<sup>3</sup> The Illinois Supreme Court stated that nothing in the Illinois Public Utilities Act “prohibits new entrants [like Grain Belt Express] ... from commencing development of transmission lines immediately as a purely private project” before becoming a public utility. Illinois Landowners Alliance v. Illinois Commerce Comm’n, 90 N.E.3d 448, 462 (Ill. 2017).

granted to Grain Belt Express in 2013. See Joint Motion of Grain Belt Express Clean Line LLC and Commission Staff for Extension of Sunset Term, In re Application of Grain Belt Express Clean Line LLC for a Siting Permit, No. 13-GBEE-803-MIS (K.C.C., filed Sept. 6, 2018). A copy of the Joint Motion and the Affidavit of Michael P. Skelly, the Chairman of Grain Belt Express, is attached as Exhibit A. The KCC previously issued its Order Granting Siting Application (“Siting Order”) on November 7, 2013. The Joint Motion of the Company and KCC Staff requests that the Siting Order be extended from November 7 of this year to November 7, 2023.

14. Prior to issuing its Siting Order, the KCC had granted Grain Belt Express a CCN in December 2011 after the parties agreed to a stipulation and agreement. See Order Approving Stipulation & Agreement and Granting Certificate, In re Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience, No. 11-GBEE-624-COC (K.C.C., Dec. 7, 2011).

15. Pursuant to the KCC Siting Order, the Company has filed quarterly development reports on the status of the Project. Grain Belt Express agrees to produce copies of the reports submitted to the KCC in 2018 (with certain portions protected as “confidential information” under 4 CSR 240-2.135) to any interested party in this proceeding.

**C. Conclusion**

16. The Supreme Court remanded this case to the Commission “to determine whether Grain Belt’s proposed utility project is necessary or convenient for the public service.” Grain Belt Express at 4. In light of the Supreme Court’s declaration of the law regarding line CCNs, it is the duty of the Commission to assess the factual record in this case and to take “further action” under Section 386.510, including a hearing. However, given that the overall facts are

substantially the same as those that were presented to the Commission last year, a hearing on remand in this proceeding need not be lengthy. See State ex rel. Anderson Motor Serv. Co. v. PSC, 134 S.W.2d 1069, 1079 (Mo. App. K.C. 1939), aff'd, 154 S.W.2d 777 (Mo. 1941). The Court of Appeals stated in that case:

As we have already indicated, the decree of the court in reversing and remanding the cause to the Commission is the law of the case and the Commission has no power to enter any order in conflict therewith, except upon facts substantially different than those that had been theretofore presented to the Commission.

134 S.W.2d at 1079 (emphasis added).

17. Nonetheless, it appears that MLA may want much more, despite its plea that it “is not seeking to re-litigate this entire case” and “is only seeking to submit information regarding any significant changes.”<sup>4</sup> Based upon its view that a decision in Illinois will not occur “for at least another two years,”<sup>5</sup> MLA seems eager to push this proceeding to the back-burner, conduct extensive discovery, and schedule three rounds of pre-filed testimony. Such a process would unnecessarily delay the public interest from being served by this Project for several more years.

18. The Company stands ready to update the Commission in supplemental direct testimony regarding the Project, including the Company’s financial, managerial, and technical ability to undertake the Project, and to address personnel changes and other facts that have materially changed since the fall of 2017. Representatives of Grain Belt Express and Clean Line will be present in the hearing room to respond to questions regarding such matters from the Commission and the parties. The Company urges the Commission to schedule such a hearing in the next 90 days so that the issues in this case can be resolved.

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<sup>4</sup> Id. at 21-22.

<sup>5</sup> See Paragraph 6 & n. 2, supra.

WHEREFORE, Grain Belt Express Clean Line LLC respectfully requests that the Commission convene a hearing within 90 days to allow the Company to respond to any questions from Commissioners and thereafter proceed to issue its Report and Order with appropriate findings of fact and conclusions of law.

/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 October 10, 2018.

/s/ Karl Zobrist

Attorney for Grain Belt Express Clean Line LLC