

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) Case No. EA-2014-0207
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

**MISSOURI FARM BUREAU FEDERATION’S RESPONSE TO GRAIN BELT
EXPRESS CLEAN LINE LLC’S MOTION IN LIMINE REGARDING THE
ISSUE OF EMINENT DOMAIN**

COMES NOW the Missouri Farm Bureau Federation (Farm Bureau), by and through its counsel of record, and for its response to Grain Belt Clean Line LLC’s (Grain Belt) motion in limine to exclude and prohibit testimony relating to public policy questions regarding the use of eminent domain, as well as property value and compensation issue related to the use of eminent domain, states as follows:

INTRODUCTION

When the Commission issues to a public utility a line certificate of convenience and necessity (CCN) under section 393.170.1,¹ certain powers are granted to that utility. One of the most potent and dangerous powers is the right to condemn land and take it from landowners against their will. The use of eminent domain can negatively impact landowners’ lives and livelihoods.

Here, one of Grain Belt’s witnesses, Mark Lawlor, has provided written testimony putting the subject of eminent domain at issue in this case. After Mr. Lawlor has provided testimony on eminent domain, Grain Belt now wants to shut down any other witness’ opportunity to respond to that testimony.

¹ All references are to the Missouri Revised Statutes (2000), as amended.

Furthermore, Staff witnesses Dan Beck and Michael Stahlman have also placed the issue of eminent domain squarely in this case. In his rebuttal testimony, Mr. Beck, at page 22, lines 18-34, testified that if the Commission grants Grain Belt the CCN it seeks, then the Commission should impose two conditions relating to eminent domain:

The following conditions are sponsored by Staff witness Michael L. Stahlman:

Staff recommends that if the Commission grants Grain Belt Express' request for a Certificate of Convenience and Necessity, the grant be conditioned on the completion and making public of all RTO interconnection studies with the Missouri converter station at 1000 MW and with the potential for exporting energy from the MISO and the PJM, and importing energy into the SPP with an opportunity for parties to review the studies and bring issues before the Commission, prior to Grain Belt Express commencing any eminent domain proceedings in Missouri.

Staff recommends that the Commission condition any grant of a CCN on Grain Belt Express not commencing any eminent domain proceedings until after the actual construction of at least 25% of the completed cost, excluding engineering, planning, and land purchase costs, of the Missouri converter station.² (emphasis in original)

As discussed below, eminent domain is an issue in this case. Therefore, Grain Belt's motion is without merit and should be denied.

ARGUMENT

I. Grain Belt's Own Witness, Mark Lawlor, Included the Issue of Eminent Domain Squarely in Grain Belt's Direct Case.

It is interesting that Grain Belt claims that testimony about eminent domain is irrelevant in this case, when one of its own witnesses included the eminent domain issue in Grain Belt's direct case.

Grain Belt witness Mark Lawlor, in his direct testimony on page 21, lines 13-15, testified that it was Grain Belt's intention to exercise eminent domain authority when "it

² See also Stahlman Rebuttal, page 18, lines 3-13.

has exhausted reasonable efforts to acquire transmission line easements through voluntarily negotiated agreements.”

Commission Rule 4 CSR 240-2.130(7)(C) provides: “Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party’s direct case[.]”

Since this case involves Grain Belt’s Application for a CCN, only Grain Belt filed direct testimony. Grain Belt filed the direct testimony of Mr. Lawlor, who testified about how and when Grain Belt plans to use eminent domain if it is granted a CCN. Farm Bureau, a party in the case, filed the rebuttal testimony of Blake Hurst, in which he testified as to why he rejects and disagrees with this aspect of Grain Belt’s direct case. Commission Rule 4 CSR 240-2.130(7)(C) expressly allows Farm Bureau to provide rebuttal testimony to Grain Belt’s direct testimony in this manner. Grain Belt’s motion should be denied.

II. Grain Belt Focuses Solely on the One Issue Involving the Five Tartan Criteria and Ignores the Other Issues in this Case to Which It Agreed.

A. The Commission May Impose Restrictions, Conditions, and Limitations on the Exercise of a CCN, and Require Continuing Supervision by the Commission.

Section 393.170 provides the statutory framework for the Commission to consider whether to grant a CCN:

1. No 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.

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.

3. The 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. **The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.** Unless exercised within a period of two years from the grant thereof, authority conferred by such certificate of convenience and necessity issued by the commission shall be null and void.

(Emphasis added). *See also State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 182 (Mo. App. W.D. 1960). In that case, the Commission granted a CCN containing “restrictions, conditions and limitations imposed upon the exercise of the area certificate, and recites a continuing supervision by the Commission.” *Id.* at 183. The Court affirmed the Commission’s order granting the CCN. *Id.* at 185. The statute and relevant case law are clear that the Commission may impose any conditions on a CCN that it deems reasonable and necessary, including conditions on eminent domain.

B. Grain Belt Agrees that One of the Issues in the Case is What Conditions, If Any, Should the Commission Impose if It Grants a CCN.

On October 27, 2014, Staff of the Missouri Public Service Commission, on behalf of all the parties to this case (including Grain Belt) except the Office of Public Counsel and Missouri Division of Energy, filed with the Commission the list of issues and list of witnesses for this case. The list of issues filed by Staff reads as follows:

1. *Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt Express*

Clean Line LLC ("Grain Belt Express") is seeking a certificate of convenience and necessity ("CCN") are necessary or convenient for the public service?

2. *If the Commission grants the CCN, what conditions, if any, should the Commission impose?*
3. *If the Commission grants the CCN, should the Commission exempt Grain Belt Express 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)?*

While issue #1 includes the five Tartan criteria, Grain Belt has agreed that is not the only issue in this case. Issue #2, which includes what conditions should be imposed if the Commission grants the CCN, places eminent domain in this case. As discussed above, Staff witnesses Dan Beck and Michael Stahlman provided rebuttal testimony suggesting two conditions restricting Grain Belt's use eminent domain until it meets other requirements. Clearly, eminent domain is an issue in this case, notwithstanding Grain Belt's assertion to the contrary. Grain Belt's motion should be denied.

III. Grain Belt Knew From Farm Bureau's Application to Intervene Filed in April that Farm Bureau's Interest in the Case was Eminent Domain, and Never Objected to Farm Bureau Becoming an Intervenor.

Finally, if Grain Belt did not want any testimony on eminent domain to be in this case, it had every opportunity to oppose Farm Bureau's application to intervene, which it chose not to oppose. Farm Bureau made no secret of its reason for wanting to intervene.

In paragraph 4 of its application, Farm Bureau stated:

Missouri Farm Bureau has long been a defender of property rights when it involves cases of eminent domain. MFB believes that the benefits claimed by

Grain Belt do not justify the granting of eminent domain to the newly formed company selling electricity to out-of-state customers. This interest is different than the general public interest.

What Farm Bureau described in its application to intervene is exactly the type of testimony filed by Farm Bureau witness Blake Hurst. Now, almost six and one-half months after Farm Bureau's application to intervene was filed without objection, Grain Belt wants to exclude Farm Bureau's testimony on eminent domain. Grain Belt's motion should be denied.

WHEREFORE, Farm Bureau respectfully asks the Commission to issue an Order denying Grain Belt's Motion in Limine, and for any other relief that is appropriate under the circumstances.

Respectfully submitted,

HEALY & HEALY,
ATTORNEYS AT LAW, LLC



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 3rd day of November, 2014.



Terry M. Jarrett