

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 )

**GRAIN BELT EXPRESS CLEAN LINE LLC’S  
MOTION IN LIMINE REGARDING THE ISSUE OF EMINENT DOMAIN**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) moves in limine to exclude and prohibit any testimony or other evidence relating to public policy questions regarding the use of eminent domain, as well as property value and compensation issues related to the use of eminent domain.

**INTRODUCTION**

When considering an applicant’s request to be issued a line certificate of convenience and necessity under Section 393.170.1,<sup>1</sup> the Commission may grant such request under Section 393.170.3 if it finds that the construction of such a project “is necessary or convenient for the public service.”

The Commission has expressly stated that when it considers such requests, it applies five criteria, none of which relate to eminent domain issues. Thus, any evidence unrelated to whether the project “is necessary or convenient for the public service” and the five criteria is not relevant to the Commission’s determination. Judge Bushman stated on the record at each local public hearing that the Commission cannot decide questions regarding eminent domain and that the proper venue for the subject is Missouri circuit court. Moreover, the Missouri Administrative

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

Procedure Act in Section 536.070(8) requires that the Commission exclude irrelevant evidence in a contested case.

For these reasons, the Commission should exclude any evidence regarding eminent domain public policy questions and related issues, and prohibit any witness from testifying about this subject at the evidentiary hearing.

### **FACTUAL BACKGROUND**

The Grain Belt Express Project (“Project”) is an approximately 750-mile, overhead, multi-terminal  $\pm 600$  kilovolt (“kV”) high-voltage, direct current transmission line (“HVDC Line”) and associated facilities that will deliver up to 500 megawatts (“MW”) of low-cost, wind-generated power from western Kansas into Missouri, and up to 3,500 MW to load and population centers in Illinois, Indiana and states farther east. The Project will facilitate the construction of thousands of MWs of new wind generation facilities in Kansas by connecting that state’s abundant, high capacity factor and affordable wind resources with the large and growing market for renewable energy in Missouri and other states.

Grain Belt Express proposes to construct in Missouri the approximately 206-mile portion of the HVDC Line on a route that crosses the Missouri River south of St. Joseph and continues across the state in an easterly direction to south of Hannibal in Ralls County, where the line will cross the Mississippi River into Illinois. The Company proposes to construct a converter station and associated AC interconnecting facilities in Ralls County that will facilitate the delivery of up to 500 MW of low-cost wind power to the grid for utilities and their customers in Missouri and nearby states. Thus, Grain Belt Express filed an application for a line certificate of convenience and necessity (“CCN”) on March 26, 2014, authorizing it to construct, own, operate, control, manage and maintain these Missouri facilities.

At each local public hearing, Judge Bushman correctly stated that the Commission cannot decide issues of eminent domain. Nevertheless, multiple witnesses filed rebuttal testimony regarding the issue of eminent domain on behalf of the Missouri Landowners Alliance (“MLA”); Show-Me Concerned Landowners (“Show-Me”); the Missouri Farm Bureau; Matthew and Christina Reichert (“Reicherts”); and Randall and Roseanne Meyer (“Meyers”).

### **ARGUMENT**

#### **I. The Commission Should Exclude Any Evidence that Does Not Relate to the Standard of Section 393.170 or the Five Criteria the Commission Will Examine When Ruling Upon the CCN Application.**

The Missouri Administrative Procedures Act requires that “[i]rrelevant and unduly repetitious evidence shall be excluded.” See § 536.070(8). “Evidence is relevant when it tends to prove or disprove a fact in issue or corroborates other relevant evidence which bears on the principal issue.” Kendrick v. Board of Police Comm’rs, 945 S.W.2d 649, 654 (Mo. App. W.D. 1997). See Gardner v. Missouri State Highway Patrol Sup’t, 901 S.W.2d 107, 116 (Mo. App. W.D. 1995); State ex rel. Webster v. Missouri Resource Recovery, Inc., 825 S.W.2d 916, 942 (Mo. App. S.D. 1992).

The Commission has stated that it will apply five criteria to cases regarding CCN applications: (1) There must be a need for the service the applicant proposes to provide; (2) The proposed service must be in the public interest; (3) The applicant’s proposal must be economically feasible; (4) The applicant must have the financial ability to provide the service; and (5) The applicant must be qualified to provide the proposed service. In re Tartan Energy Co., No. GA-94-127, Order Granting Certificate of Convenience and Necessity (September 16, 1994). See In re Entergy Arkansas, Inc., No. EA-2012-0321, Order Granting Certificate of Convenience and Necessity at 2 (July 11, 2012). Therefore, all relevant evidence must relate to one of these five criteria and the statutory standard of convenience and necessity. Evidence that

does not relate to any of the five factors is irrelevant and must be excluded pursuant to Section 536.070(8).

**II. Public Policy Issues regarding Eminent Domain Do Not Relate to Any of the Five Criteria the Commission Will Examine When Considering the CCN Application and Should Be Excluded From Evidence.**

Public policy issues regarding eminent domain are irrelevant to the five factors that the Commission will apply in this case. Judge Bushman stated at the beginning of every local public hearing: “The commission cannot decide any questions about eminent domain, including whatever particular property could be taken or the amount of compensation that would be paid. Those questions can only be addressed in circuit court.” See Monroe City Local Public Hearing (“LPH”) (Aug. 12, 2014) at 7:25-8:5. See also Hannibal LPH (Aug. 12, 2014) at 6:9-13; Moberly LPH (Aug. 14, 2014) at 7:2-6; Marceline LPH (Aug. 14, 2014) at 7:17-21; St. Joseph LPH (Sept. 3, 2014) at 5:23-6:2; Cameron LPH (Sept. 3, 2014) at 6:2-6; Hamilton LPH (Sept. 4, 2014) at 5:20-24; Carrolton LPH (Sept. 4, 2014) at 7:3-6.

If the Commission cannot decide any questions about eminent domain, then testimony regarding public policy issues and similar subjects related to eminent domain is irrelevant and should be excluded from evidence under Section 536.070(8).

Yet, numerous witness have submitted rebuttal testimony regarding whether eminent domain is consistent with private property rights. For example, the testimony of Blake Hurst is entirely about the Farm Bureau’s political stance on eminent domain:

I will address the direct testimony of Grain Belt witness Mark Lawlor on Grain Belt's intention to exercise eminent domain authority when “it has exhausted reasonable efforts to acquire transmission line easements through voluntary negotiated agreements.” Specifically, I will discuss Missouri Farm Bureau's opposition to Grain Belt's Application for a Certificate of Convenience and Necessity in the context of our commitment as an organization to the protection of property rights relative to eminent domain [emphasis added].

See Hurst Rebuttal Test. at 1:15-2:2. He does not address the Company’s policy regarding the use of eminent domain, but instead spends the remainder of his testimony describing Farm Bureau’s political and policy positions on the subject.

Similarly, MLA witness Dr. Dennis Smith testifies “[t]his is an experiment that I do not consent to participate in, and granting eminent domain would be condemning people to participate without consent.” See Smith Rebuttal Test. at 10:4-7. Likewise, Show-Me witness Charles Kruse states that while “I served as Missouri Farm Bureau president, we saw a lot of abuses of eminent domain. We, as an organization, decided to try to pass stronger eminent domain legislation, which we were successful in doing. ... To approve this massive amount of eminent domain for a project like this is unwarranted and unjust.” See Kruse Rebuttal Test. at 16:4-16.

MLA witness John Cauthorn testifies that the Missouri Cattlemen’s Association “strongly opposes granting eminent domain” to Grain Belt Express, and that the “association has long been a defender of property rights whether it involved cases of eminent domain or regulatory abuse.” See Cauthorn Rebuttal Test. at 3:1-4. Boyd Harris, on behalf of the Reichert intervenors, responds to questions regarding land “taken through eminent domain,” and states: “I don't know that there is such a thing as a ‘typical multiplier’ for land taken in condemnation.” See Harris Rebuttal Test. at 5:1-14.

These are examples of the prefiled testimony that discuss public policy or compensation questions regarding the power of eminent domain. However, none of these issues is relevant to the statutory standard or to any of the five criteria that the Commission will examine when ruling upon the Company’s CCN application.

There is no good reason to devote precious hearing time to litigate public policy issues related to eminent domain, which are properly the subject of consideration by the Missouri General Assembly, not the Public Service Commission. Similarly, questions related to property value and compensation are to be resolved by the courts.

The parties have submitted pre-filed direct, rebuttal and surrebuttal testimony from 37 witnesses. Many of them offer lengthy testimony regarding complex financial, engineering, medical, economic and other technical issues. It is neither necessary nor proper for the Commission to deal with issues regarding eminent domain which is not pertinent to its duties under Section 393.170. Instead, the Commission should focus on the evidence relevant to the issues that it will decide.

Therefore, Grain Belt Express requests that that the Commission exclude from evidence the following rebuttal testimony and further prohibit any witness from testifying about public policy issues of eminent domain, as well as related property value and compensation questions:

- Blake Hurst Rebuttal Testimony (Missouri Farm Bureau) in its entirety.
- Dennis Smith Rebuttal (MLA) Testimony at page 10, lines 4-7.
- John Cauthorn Rebuttal (MLA) Testimony at page 3, line 1 through page 4, line 6.
- Roseanne Meyer Rebuttal Testimony at page 4, line 18 through page 5, line 7.
- Christina Reichert Rebuttal Testimony at page 4, line 12 through page 5, line 7; page 7, lines 2-4.
- Boyd Harris Rebuttal Testimony (Reichert/Meyer) at page 5, lines 1-14.
- Charles Kruse Rebuttal Testimony (Show-Me) at page 16, lines 4-16.

## CONCLUSION

For these reasons, the Commission should exclude any testimony and other evidence relating to public policy issues regarding eminent domain, as well as the application of eminent domain to property and associated compensation.

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ATTORNEYS FOR GRAIN BELT EXPRESS  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all parties of record by email or U.S. mail, postage prepaid, this 31st day of October 2014.

        /s/ Karl Zobrist          
Attorney for Grain Belt Express Clean Line LLC