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Witness: Blake Hurst

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Type of Exhibit: Rebuttal Testimony
Case No.: EA-2014-0207
Date Testimony Prepared: September 15, 2014

**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)

**REBUTTAL TESTIMONY OF
BLAKE HURST
ON BEHALF OF THE
MISSOURI FARM BUREAU
SEPTEMBER 15, 2014**

Exhibit No. 500
Date 11-10-2014 Reporter Staubert
File No. EA-2014-0207

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

2 **Q 1: Please state your name, position and business address.**

3 A: My name is Blake Hurst, and I am president of Missouri Farm Bureau. My business
4 address is 701 South Country Club Drive, Jefferson City, MO 65109.

5 **Q 2: Please describe your experience and qualifications.**

6 A: I am a sixth generation farmer raising corn and soybeans and running a greenhouse
7 nursery with my family in northwest Missouri. I was first elected president of Missouri
8 Farm Bureau at our annual meeting in December 2010. As vice president for seven
9 years, I chaired our State resolutions Committee, which coordinates the development of
10 policy recommendations for consideration by members serving as voting delegates at our
11 annual meeting.

12 **Q 3: On whose behalf are you appearing in this proceeding?**

13 A: I am appearing on behalf of the Missouri Farm Bureau.

14 **Q 4: Please describe the scope and purpose of your testimony.**

15 A: I will address the direct testimony of Grain Belt witness Mark Lawlor on Grain Belt's
16 intention to exercise eminent domain authority when "it has exhausted reasonable efforts
17 to acquire transmission line easements through voluntarily negotiated agreements."¹
18 Specifically, I will discuss Missouri Farm Bureau's opposition to Grain Belt's
19 Application for a Certificate of Convenience and Necessity in the context of our

¹ Lawlor Direct, page 21, lines 13-15.

1 commitment as an organization to the protection of property rights relative to eminent
2 domain.

3 **II. MISSOURI FARM BUREAU'S INTEREST IN EMINENT DOMAIN**

4 **Q 5: Why is the Missouri Farm Bureau interested in eminent domain?**

5 A: Protection of property rights is among the most fundamental beliefs expressed in our
6 policy positions. Missouri Farm Bureau has a longstanding policy pertaining to various
7 aspects of property rights, including the use of eminent domain. I will highlight the
8 following excerpts (underlined) from our current policy, and the entire policy pertaining
9 to eminent domain is included in my written testimony:

10 *The government acquisition of land and buildings should be severely restricted in cases*
11 *where reasonable alternatives are available. We oppose the acquisition of land and*
12 *buildings from an unwilling seller simply to keep development within a particular*
13 *political boundary.*

14 *We support Missouri's eminent domain reform law, which strengthens the protection of*
15 *landowners from condemnation with assurance that needed rural infrastructure such as*
16 *roads, power lines and water and sewer lines can be built in a timely and economical*
17 *manner with equitable compensation granted to all affected landowners. We believe*
18 *entities with condemnation authority should be required to consider alternate routes and*
19 *to directly notify and publicly disclose routes for proposed right-of-way expansion to*
20 *affected landowners.*

21 *We oppose the use of eminent domain for the acquisition of land to be resold to private*
22 *owners or for the transfer of property from one private entity to another for the purpose*
23 *of economic development. We believe that easements acquired by an entity with*

1 *condemnation authority should return to the landowner if unused after ten years. We*
2 *oppose granting eminent domain authority to cable companies or any other entities that*
3 *do not already have eminent domain authority.*

4 *We believe eminent domain authority should not be used for purposes of private*
5 *development or recreational facilities, and the term “public use” in eminent domain*
6 *statutes and the state constitution excludes these purposes.*

7 *We support further restrictions on the use of eminent domain to acquire blighted property*
8 *in both urban and rural areas.*

9 *We believe landowners in eminent domain cases should have five years from the time of*
10 *the original settlement in which to negotiate claims for damage from construction and*
11 *maintenance that may not have been confirmed at the time of the initial settlement.*

12 *We believe that when it becomes necessary for any city to condemn private property*
13 *outside the city limits, for any authorized purpose, the governing body of the city must*
14 *first be required to obtain the approval of the county commission of the county containing*
15 *such property.*

16 *We support changes to the Missouri Constitution which promote our established policy*
17 *on property rights. Furthermore, if deemed to be a valuable tool to that end, we support*
18 *the use of a Missouri Farm Bureau initiated initiative petition process to effect those*
19 *changes.*

20 *Missouri Supreme Court rulings this year upheld key provisions of Missouri’s eminent*
21 *domain reform law enacted in 2006. If legal challenges weaken the law, we support*
22 *necessary modifications to protect property rights.*

1 **Q 6: Why did Missouri Farm Bureau Adopt this Policy?**

2 A: Significant portions of this policy were adopted by Missouri Farm Bureau members
3 following the 2005 U.S. Supreme Court ruling in *Kelo v. City of New London*. This
4 ruling prompted an overwhelming public outcry nationwide against allowing the transfer
5 of private property from one owner to another through the condemnation for economic
6 development purposes. Missouri Farm Bureau also served on the Eminent Domain Task
7 Force appointed in 2005 by then Governor Matt Blunt to review state statutes in the wake
8 of the *Kelo* ruling. Subsequently, we worked successfully with legislators—including
9 Missouri Attorney General Chris Koster, who as a state senator sponsored the Senate
10 version of the legislation—to enact eminent domain legislation based on the task force’s
11 recommendations. The state law enacted in 2006 and subsequent court rulings have
12 affirmed Missourians’ deeply held belief that eminent domain power should be tightly
13 controlled and used only when absolutely necessary for public purposes and not for
14 economic development purposes.

15 **Q 7: Why does Missouri Farm Bureau so strongly oppose the use of eminent domain in**
16 **this case?**

17 A: Grain Belt Express Clean Line LLC is a consortium of private investors who propose to
18 transmit electricity generated by wind farms in Kansas to a terminal in Indiana at which
19 point it will be delivered to buyers. It is a business venture that does not merit
20 certification by the Missouri Public Service Commission. Neither its purpose nor
21 potential benefits to Missouri citizens enumerated by Grain Belt Express justify the
22 authorization to exercise eminent domain power. Moreover, the potential benefits are
23 outweighed by the concerns expressed by many of our members along with hundreds of

1 others who participated in the commission's local public hearings and submitted
2 comments in opposition to the project.

3 An article by Andrew Morriss, an author and Senior Fellow at the Property &
4 Environment Research Center in Bozeman, Montana, is a great example of why the
5 Missouri Farm Bureau is against Eminent Domain in this case. The article is attached as
6 Schedule BH-1.

7 **III. CONCLUSION**

8 **Q 8: Does this conclude your testimony?**

9 A: Yes, it does.

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AFFIDAVIT OF BLAKE HURST

STATE OF MISSOURI)
) ss
COUNTY OF Cole)

Blake Hurst, being first duly sworn on his oath, states:

1. My name is Blake Hurst. I am the President of the Missouri Farm Bureau. My business address is 701 S. Country Club Drive, Jefferson City, MO 65109.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of the Missouri Farm Bureau, consisting of 5 pages, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and accurate to the best of my knowledge, information and belief.


Blake Hurst

Subscribed and sworn to before me this 14th day of September, 2014.


Notary Public

My commission expires: March 16, 2018

DEBRA A. JOHNSON
Notary Public - Notary Seal
STATE OF MISSOURI
County of Cole
My Commission Expires 3/16/2018
Commission # 14437059



EMINENT DOMAIN & ENERGY INFRASTRUCTURE

PERC Report: [Volume 33, No.1, Summer 2014 \(/perc-reports/volume-33-no1-summer-2014\)](#)

[Aa](#) [Aa](#) [Aa](#) [Aa](#)

Author: [Andrew Morriss \(/staff/andrew-morriss\)](#)

Published: Wednesday, May 14, 2014

The Supreme Court’s 2005 *Kelo v. City of New London* decision that a city can use its power of eminent domain to redistribute property in pursuit of economic development drew widespread public opposition, setting off what Professor Nicole Garnett termed “a firestorm of popular outrage.” It also prompted many states to adopt measures limiting the use of public domain for such purposes.

Now, the development of both renewable and unconventional fossil fuel energy sources are raising eminent domain issues again, as utilities use state grants of eminent domain power to take land for transmission lines and pipelines. These takings pose even greater challenges than the blatant rent-seeking property owners faced in cases like *Kelo*. Unlike landowners who are forced to sell their property outright, those who find themselves hosting an unwanted transmission line or other infrastructure on their property are locked into a permanent relationship with a hostile partner sharing the rights to their land. Eminent domain law provides no safeguards to address these problems.

Unfortunately, my family is developing first-hand experience with the issue, as the Lower Colorado River Authority (LCRA) used its eminent domain power to take an easement across my in-laws’ ranch for a high-voltage transmission line that carries wind-generated electricity from the Texas Panhandle to central Texas.

None of the landowners along the LCRA line had any say in the terms of the easement or any recourse to contest any term other than the price paid for the land. Just 30 miles away, Florida Power and Light (FP&L) built a parallel transmission line to do the same thing. But because FP&L lacks the power of eminent domain in Texas, it had to negotiate with the landowners along its route. The terms of the FP&L and LCRA easements are strikingly different, illustrating the problem with substituting involuntary takings for arms’ length bargaining.

Think of a landowner holding a set of rights that property lawyers often term a “bundle of sticks.” A utility easement is the removal of some of those sticks from the landowner’s bundle and their transfer to the utility. This effectively makes the landowner and the utility co-owners of the land, sharing the rights to the easement. The landowner, for example, loses control of the right of access to the property, because the utility has the right to enter the land without notice to construct and maintain its transmission line. For a landowner earning income from leasing hunting rights, this is significant because utility operations disrupt hunting, which lowers the value of the leases. Transmission line easements are not just unsightly wires—they require regular access by utility workers, give off a loud buzzing noise, can shock livestock and people, and ruin scenic vistas.

Before

After



Easements were developed by the common law as a way to enhance property values. Real estate developers often use them to distribute rights among the parcels within a development to provide access to shared amenities such as a park, beach, or trail, or to preserve important features by restricting the type of development subsequent landowners can do. Most residential construction in the United States is subject to such privately agreed-upon restrictions.

The crucial difference is that these restrictions are the result of either negotiation between property owners or by developers seeking to maximize the total value of their land. A restriction on a parcel will be imposed only if the increase in value to the other parcels is greater than the reduced value of the restricted parcel. When an easement is taken by eminent domain, there is no such constraint.

Most states’ eminent domain laws are built around models from the 1930s and 1940s. The majority of takings were for things such as highway or school construction, in which the landowner was not forced into a long-term relationship with the entity taking his or her land. Even for things like transmission lines, landowners were often thrilled to be in an area gaining electrical service.

Today’s infrastructure projects are both more intrusive—larger, higher voltage, etc.—and more contested in their benefits. For example, the benefits of Texas’ state-supported expansion of wind energy are hotly contested by those who doubt the benefits of massive investments in alternative energy. On the other hand, expanding pipelines to increase unconventional oil and gas supplies is opposed by environmentalists.

Gifting utilities with the power to seize private property only exacerbates conflicts. As the FP&L line in Texas clearly illustrates, utilities are capable of building infrastructure without the power of eminent domain through voluntary market transactions. Why aren't all such projects done in the same way?

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Andrew Morriss is the author or coauthor of more than 50 scholarly articles, books, and book chapters. He serves as a Research Fellow at the New York University Center for Labor and Employment Law, a Senior Fellow at the Property & Environment Research Center in Bozeman, Montana, and a Senior Scholar at the Mercatus Center at George Mason...

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ANDREW MORRISS
SENIOR FELLOW



Andrew Morriss is the author or coauthor of more than 50 scholarly articles, books, and book chapters. He serves as a Research Fellow at the New York University Center for Labor and Employment Law, a Senior Fellow at the Property & Environment Research Center in Bozeman, Montana, and a Senior Scholar at the Mercatus Center at George Mason University.

He is also a Reporter for the Restatement of Employment Law by the American Law Institute, and a Senior Fellow for the Houston-based Institute for Energy Research. He taught the Law and Economics of the Financial Crisis as a Visiting Professor of Law at Alabama during fall 2009 semester.

Morriss earned his A.B. from Princeton University and a M.A. in Public Affairs and a J.D. from the University of Texas at Austin. He received a Ph.D. in economics from the Massachusetts Institute of Technology. After law school, Morriss clerked for U.S. District Judge Harold Barefoot Sanders, Jr. in the Northern District of Texas and worked for two years at Texas Rural Legal Aid in Hereford and Plainview, Texas.

Morriss was formerly the inaugural H. Ross and Helen Workman Professor of Law & Professor of Business at the University of Illinois College of Law. Currently he is the D. Paul Jones, Jr. & Charlene A. Jones Chairholder in Law and Professor of Business at the University of Alabama. He can be reached at:

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For more information, see his complete [CV \(http://perc.org/sites/default/files/Morriss_2013.pdf\)](http://perc.org/sites/default/files/Morriss_2013.pdf).

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