

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)

RESPONSE OF THE MISSOURI FARM BUREAU TO GRAIN BELT EXPRESS’
RESPONSE TO ORDER DIRECTING FILING OF ADDITIONAL INFORMATION

On February 11, 2015, the Commission issued its “Order Directing Filing of Additional Information.” Grain Belt Express filed its response and additional information on April 13, 2014. In the Commission’s order, the Commission stated that “Any responses by any party to the additional information filed by Grain Belt Express Clean Line LLC shall be filed no later than thirty days after the additional information is filed in EFIS unless otherwise ordered.”

The Missouri Farm Bureau respectfully submits the following response to Grain Belt Express’ “Response to Order Directing Filing of Additional Information,” filed on April 13, 2015.

OVERVIEW

*Missouri Farm Bureau Objects to GBE’s Request to have its Response and
Supplemental Exhibits Received Into the Record*

As Missouri Farm Bureau noted in its Recommendations for Supplemental Procedural Schedule filed on April 22, it believes that every due process protection under the law should be afforded to landowners. The power of eminent domain is a powerful, coercive tool to take property away from landowners against their will. The contested

case procedures set out in the Missouri Administrative Procedures Act, §§ 536.010 - .150, RSMo, and Commission rules 4 CSR 240-2.010 - .200, were enacted to provide adequate due process to parties who face the loss of property. *See Sapp v. City of St. Louis*, 320 S.W.3d 159, 163-65 (Mo. App. E.D. 2010). At a minimum, if any additional supplemental information is to be considered for admission into the record, Missouri Farm Bureau recommends that the full procedural due process protections afforded in contested cases be afforded here. Grain Belt Express should be required to file supplemental direct testimony to sponsor any additional information it wants to offer into the record, which would supply the required foundation to admit evidence (currently, no adequate foundation exists). Then, adequate time should be allowed for discovery, the other parties should be allowed to file rebuttal and surrebuttal testimony, and a continuation of evidentiary hearings should be commenced to provide an opportunity for the parties to cross-examine the witnesses and object to any testimony that it believes is improper or inadmissible. After the additional evidentiary hearings, the parties should have the opportunity to file post-hearing briefs. Nothing less than the full contested case protections can guarantee a fair and complete record so that the case can be decided impartially on the merits.

Grain Belt Express Failed to Provide Much of the Information As Directed By the Commission, and the Case Should not Proceed Without This Information

Missouri Farm Bureau notes that while Grain Belt Express filed some additional information, it did not file the majority of the additional information and documentation that the Commission directed it to file. Grain Belt Express' common response to this was that it would file the information and documentation after it receives a CCN as a condition to receiving the CCN. This thwarts the due process protections afforded parties

under the contested case procedures under Missouri statutes and this Commission's rules. Parties cannot provide meaningful comments or any rebuttal to information that is filed after a CCN is granted. Missouri Farm Bureau believes landowners facing eminent domain and the involuntary taking of their land should be given every legal protection before eminent domain is applied in this, or any, case. This means that the proceedings in this case should not continue until Grain Belt Express has provided all of the documentation and information as directed in the Commission's February 11 Order, and the other parties have had a full and fair opportunity to review, analyze, and provide comments on that documentation and information for the Commission's consideration.

Missouri Farm Bureau will only specifically address directives 1 and 2 of the Commission's February 11 Order, as these are the ones of most importance to landowners and farming and ranching operations. By no means should it be assumed that the other directives are not important to Missouri Farm Bureau—they are. However, Missouri Farm Bureau will leave it to other parties to address Grain Belt Express' responses to those directives.

MISSOURI FARM BUREAU RESPONSES TO GRAIN BELT EXPRESS' ADDITIONAL INFORMATION

- 1. Grain Belt Express shall provide a list of all properties on the selected project route in Missouri and designate for which properties easements have been acquired or are yet to be acquired to facilitate completion of the proposed Clean Line Energy project.**

Under this directive, Grain Belt Express filed a narrative response and Supplemental Exhibit 1.

Narrative Response

On page 2 of its Response, Grain Belt Express makes several statements and allegations that require further scrutiny:

- “The primary purposes of the meetings with landowners have thus far been to introduce the Project and the easement agreement, collect feedback, and address any questions or concerns.”

Missouri Farm Bureau has no knowledge or information to know whether this is true or not. Grain Belt Express provides no list and dates of meetings with landowners, provides no list of names of the Grain Belt Express representatives meeting with landowners, provides no documents or information that may or may not have been furnished to landowners, provides no notes from any meetings with landowners as to what is discussed, provides no records of phone calls and notes from conversations from phone calls, and provides no details at all to support its statement. Grain Belt Express provides no feedback that it may have received from landowners and how it responded back to the landowners, and provides no instances, examples or details of what questions or concerns from landowners it may have addressed and how it addressed them. From what GBE provided, Missouri Farm Bureau cannot determine whether landowners were given complete and accurate information or if their specific needs were addressed.

- “The Company’s intent in meeting with landowners so far in advance of construction is to provide as much time as possible for landowners to understand the project, review the easement agreement, and secure legal representation if desired.”

Grain Belt Express began meeting with landowners in July, 2013, almost two years ago. (Lawlor Direct, Exhibit 101, schedule MOL-3). In fact, Grain Belt Express witness Mark Lawlor testified glowingly about the unprecedented public outreach that Grain Belt Express has performed. (Lawlor Direct, Exhibit 101). Eight local public hearings were held by the Commission (one in each affected county), with a record participation rate. There has been heavy press and media coverage in Northern Missouri where the route is planned. Even with this saturation of information made available to landowners, the overwhelming majority of landowners oppose the project. Landowners do understand the project, and they do not want it on or near their land. That is why Grain Belt Express has been largely unsuccessful in obtaining voluntary easements.

- “Through the course of meetings with the Company, Missouri landowners have signed easement agreements for 45 tracts of property.” Supplemental Exhibit 1 shows that there are 724 total tracts along the route, and Grain Belt Express, despite working hard on landowners for almost two years, has been able to obtain only a paltry 6.2% success rate. By any standard, this is an abject failure and is proof of the vast resistance to the project. This rejection by landowners is even more glaring when reviewed county-by-county, which Missouri Farm Bureau will analyze below.
- “The large-scale acquisition of easements for transmission lines typically begins after the receipt of key regulatory approvals, such as when this Commission issues a decision on the Company’s Application for a CCN.”

Grain Belt Express provides absolutely no support or history from prior cases for this conclusory allegation. Grain Belt Express’ admitted public outreach actions over the

last almost two years contradict this position. What Grain Belt Express is really saying is that it can't get voluntary easements, so it needs the hammer of eminent domain before it can acquire the land necessary for its project. Missouri Farm Bureau opposes the use of eminent domain in this case, and this the Commission should not approve a CCN under these circumstances.

Supplemental Exhibit 1

Supplemental Exhibit 1 is a list of the property tracts on the route, along with a notation for each tract as to whether a voluntary easement has been signed by the landowner. The tracts are grouped by county. As noted above, out of 724 total tracts, Grain Belt Express has only obtained 45 voluntary easement agreements, only 6.2% of the total easements need. Following is a county-by-county analysis showing the number of tracts, the number of voluntary easements, and percentage:

- Buchanan: 90 tracts, 4 easements, 4.4%
- Clinton: 63 tracts, 5 easements, 12.6%
- Caldwell: 95 tracts, 3 easements, 3.2%
- Carroll: 85 tracts, 14 easements, 16.4%
- Chariton: 114 tracts, 4 easements, 3.5%
- Randolph: 73 tracts, 5 easements, 6.8%
- Monroe: 103 tracts, 4 easements, 3.9%
- Ralls: 101 tracts, 6 easements, 5.9%

In the four counties with the most tracts—Chariton (114 tracts), Monroe (103 tracts), Ralls (101 tracts), and Caldwell (95 tracts), Grain Belt Express has only obtained 17 easements, or a 4.1% rate.

In the two counties where Grain Belt Express has achieved over 10% (Carroll and Clinton), further analysis reveals that in Clinton County, there is one instance of easements on adjoining tracts of land (two tracts). In Carroll County, there are three instances of easements on adjoining tracts of land (two where there are three tracts adjoining, one where there are two tracts adjoining). Given that there are 525 owners for the 724 tracts of land, there are owners who own multiple tracts of land. If one were to assume that in those seven instances of adjoining easements in Clinton and Carroll Counties, those ten tracts were owned by only 4 landowners, then Grain Belt Express' success rates are inflated in those counties.

In sum, the statistics show that for 93.8% of the tracts of land, Grain Belt Express, despite working hard on landowners for almost two years, has failed to obtain voluntary easements. Given this level of resistance, the Commission should not grant a CCN for this project.

- 2. Grain Belt Express shall set forth the status of its efforts to obtain the assent of the county commissions required by Section 229.100, RSMo, in the eight counties crossed by the selected project route in Missouri and provide supporting documentation thereof, including any letters of assent from those eight county commissions.**

It is important to note the importance the General Assembly has bestowed on the local counties in this process. Section 229.100, RSMo, provides:

No person or persons, association, companies or corporations shall erect poles for the suspension of electric light, or power wires, or lay and maintain pipes, conductors, mains and conduits for any purpose whatever, through, on, under or across the public roads or highways of any county of this state, without first having obtained the assent of the county commission of such county therefor; and no poles shall be erected or such pipes, conductors, mains and conduits be laid or maintained, except under such reasonable rules and regulations as may be prescribed and promulgated by the county highway engineer, with the approval of the county commission.

Further, the General Assembly has authorized the Commission to issue a CCN only after the required county consents are in place. § 393.170.2, RSMo. (“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.” (emphasis added)). Finally, this Commission’s rules at 4 CSR 240.105 recognize that the county consents must be given before the Commission can issue a CCN for a transmission project:

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications by an electric utility for a certificate of convenience and necessity shall include:

(D) When approval of the affected governmental bodies is required, evidence must be provided as follows:

1. When consent or franchise by a city or county is required, approval shall be shown by a certified copy of the document granting the consent or franchise, or an affidavit of the applicant that consent has been acquired; and
2. A certified copy of the required approval of other governmental agencies; and

(E) The facts showing that the granting of the application is required by the public convenience and necessity.

(2) If any of the items required under this rule are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought.

(emphasis added.)

Here, it is undisputed that Grain Belt Express has not received the required consents from all of the affected counties. Grain Belt Express does not have consents from 5 counties—Clinton, Chariton, Caldwell, Ralls, and Monroe. (Lowenstein Rebuttal, Exhibit 306, schedule LDL-4; Dietrich Rebuttal, Exhibit 200, p. 4, lines 10-12). Grain

Belt Express admits as much and states, “If this Commission grants a CCN to the Company, Grain Belt Express will obtain any necessary additional authority or clarification from these county commissions and submit evidence of such action to this Commission, as permitted by 4 CSR 240-3.105(1)(D)-(2).” (GBE’s Response to Order Directing Filing of Additional Information at p. 6). However, as noted above, both § 393.170.2, RSMo., and 4 CSR 240.105 (2), require Grain Belt Express to provide the consents before the Commission can issue a CCN.

CONCLUSION

Missouri Farm Bureau thanks the Commission for the opportunity to provide these responses, comments and recommendations.

Respectfully submitted,

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ATTORNEY FOR THE MISSOURI
FARM BUREAU

May 13, 2015

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 13th day of May, 2015.

A handwritten signature in black ink that reads "Terry M. Jarrett". The signature is written in a cursive style with a prominent initial "T" and "J".

Terry M. Jarrett