

**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 Current ) File No. EA-2016-0358  
Transmission Line and an Associated Converter )  
Station Providing an Interconnection on the )  
Maywood-Montgomery 345kV Transmission Line )

**MISSOURI FARM BUREAU'S  
INITIAL POST-HEARING BRIEF**

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**INITIAL POST HEARING BRIEF  
OF THE MISSOURI FARM BUREAU**

**INTRODUCTION**

Missouri Farm Bureau (MFB) is a non-profit corporation in good standing organized under the laws of the State of Missouri. MFB is the state's largest and most recognized agricultural organization working to improve the quality of the life for farmers and rural Missourians. Organized at the grass roots, MFB has 141 offices in 113 counties with each county Farm Bureau run by local members.

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.

Grain Belt Express proposes to build and operate an approximately 750-mile, overhead, multi-terminal +600 kilovolt HVDC transmission line and associated facilities that will deliver up to 500 megawatts of 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.

As set out below, MFB believes that this Commission should deny Grain Belt Express's application. If the Commission does approve the application, then MFB believes that the Commission should impose a condition that prohibits Grain Belt Express from exercising eminent domain.

## **ARGUMENT ON CONTESTED ISSUES**

*1. Does the evidence establish that the Commission may lawfully issue to Grain Belt Express Clean Line LLC ("Grain Belt") the certificate of convenience and necessity ("CCN") it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?*

The evidence establishes that the Commission may not lawfully issue a certificate of necessity and convenience to Grain Belt Express.

### **a. Lack of county commission approval**

Under RSMo. 229.100, no person or other entity may erect power lines in a given county without first securing the approval of that county's commission.

Furthermore, RSMo. 393.170 prohibits the Commission from issuing a CCN until the corporation seeking the CCN has submitted a verified statement showing that it has obtained the proper consent of the relevant local officials.

In this case, Grain Belt's own application fails to certify that it has approval for every county along the proposed route for the project, and no evidence has been presented to demonstrate that each county along the proposed route has consented to the Grain Belt project's construction. This is fatal to Grain Belt's application, as the recently decided *Neighbors United Against Ameren's Power Line v. Public Service Commission*, WD79883 makes clear.

As such, Grain Belt's application fails to comply with state statute, and the Commission does not have the legal authority to issue a CCN to the Grain Belt Express project.

**b. Grain Belt is not under the authority of the Commission and the Commission may not issue Grain Belt a CCN**

Under Missouri law the Commission does not have the authority to grant a CCN to a corporation that is purely private, and is selling its services only through individual, privately negotiated contracts. The record makes clear that Grain Belt intends to operate as a merchant line, making specific contracts for the sale of power, but with no plan to make power available to the general public.<sup>1</sup> Under the precedent set forth in *State ex rel. Dancinger v. Public Service Commission*, 205 S.W. 36 (Mo. 1918), a corporation that does not sell power for public use is not subject to Commission regulation, and therefore also implicitly may not be issued a CCN by the Commission.

In addition, according to the evidence developed at hearing, there is no guarantee that the Grain Belt Express project will actually deliver any power into Missouri after it is constructed. The tenuous agreement between Grain Belt Express and MJMEUC does not actually bind MJMEUC to take any power from Grain Belt Express.<sup>2</sup> If Grain Belt is granted a CCN and MJMEUC does not take on power from Grain Belt, Missouri could be left with a "utility" with a CCN but no Missouri customers. This clearly seems to fall outside the statutory purpose for Commission oversight under 393.130, and therefore no CCN should be issued to Grain Belt Express.

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<sup>1</sup> Tr. Vol 12, at p. 517.

<sup>2</sup> Schedule MOL-1, page 12, section 3.4.

***2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a CCN are “necessary or convenient for the public service” within the meaning of that phrase in section 393.170, RSMo.?***

The evidence does not establish that the Grain Belt project is necessary or convenient within the meaning of RSMo. 393.170.

First, there has been no evidence presented that the Grain Belt project will bring power to Missouri consumers that are otherwise without electrical power. In that sense, Grain Belt’s application fails a “plain language” reading of RSMo. 393.170. But even taking into account the holding in *State ex rel. Intercon, Inc. v. Public Service Commission*, 848 S.W.2d 593 (Mo. App. 1993), which states that “necessity” in this context does not mean “essential” or “absolutely indispensable”, the Grain Belt application should fail because it, at best, merely duplicates available service with no attendant benefits but very clear detriments to the state. That Grain Belt’s services are duplicative of other power providers is clear from the record.<sup>3</sup>

Second, the Grain Belt project’s severe negative impact on the landowners in the path of the project should be clear from the testimony submitted by multiple landowners at both the public hearings on this issue, and on the record here from both landowners and the leaders of Missouri’s agricultural advocacy groups.

For the sake of brevity, MFB will not set forth every specific piece of testimony here from landowners and agricultural leaders regarding the negative impact of the Grain Belt Project. MFB would direct the Commission to the testimony of Blake Hurst<sup>4</sup>, Charles Kruse<sup>5</sup> and John Cauthorn<sup>6</sup> for testimony from longstanding Missouri agricultural leaders regarding the negative

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<sup>3</sup> Ex. 400 (P), Justis rebuttal testimony, pages 7-8.

<sup>4</sup> Exhibit 500.

<sup>5</sup> Exhibit 404.

<sup>6</sup> Exhibit 303.

impacts of eminent domain abuse by private entities. Furthermore, the testimony of Christina Reichert<sup>7</sup>, Roseanne Meyer<sup>8</sup>, Wiley Hubbard<sup>9</sup>, Charles Henke<sup>10</sup> and Jack Garvin<sup>11</sup> lays out the multiple negative impacts of the proposed project for Missouri’s farmers and ranchers from the perspective of landowners in the path of the Grain Belt project.

Finally, it also clear that the Grain Belt project’s claim to positive economic impacts is based on self-serving data provided by the company and on untested economic modeling. Department of Economic Development witness Alan Spell made it clear in his testimony that data provided to develop the DED analysis of the project was provided solely by Grain Belt Express<sup>12</sup>, and that the DED’s methodology is generally not verified or confirmed by post-project analysis.<sup>13</sup>

For these reasons, the Grain Belt Express project is not “necessary and convenient” within the meaning of RSMo. 393.170, and Grain Belt’s application should be denied.

***3. If the Commission grants the CCN, what conditions, if any, should the Commission impose? (If the Commission wanted to condition the effectiveness of the CCN on the actual construction of the proposed converter station and the actual delivery of 500 MW of wind to the converter station, how would it do it?)***

The Commission has asked which conditions should be imposed on the Grain Belt Express project if it is authorized. From the evidence set forth above it is clear that Grain Belt

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<sup>7</sup> Exhibit 550.

<sup>8</sup> Exhibit 575.

<sup>9</sup> Exhibit 304.

<sup>10</sup> Exhibit 600.

<sup>11</sup> Exhibit 552.

<sup>12</sup> Tr. Vol 16, at p. 1250, lines 3-15.

<sup>13</sup> Tr. Vol 16, at p. 1242, lines 15-20.

Express cannot be trusted with the power of eminent domain. The historical justifications for eminent domain use by utilities are not in place here. The traditional justification that allowed utilities to cross any property because the utility carried services to *all* properties is not a consideration from the record before the Commission. The Grain Belt Express project is ultimately a private project, proposed by a private company to benefit, and should not have the power of eminent domain.

Additionally, MFB believes that a decommissioning fund should be required from the inception of the project to help decommission the project should construction cease during the development phase, or if Grain Belt Express should go bankrupt before the end of the life of the project.

***4. If the Commission grants the CCN, should the Commission exempt Grain Belt 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)?***

MFB does not believe that Grain Belt Express should be exempted from the reporting requirements as set forth by state law. MFB does not believe that Grain Belt Express meets the requirements to be regulated by the Commission under state law, but if the Commission determines that Grain Belt does qualify for a CCN and oversight by the Commission, Grain Belt should not be allowed to pick and choose which utility regulations it will comply with and which it will ignore.

## **CONCLUSION**

For the legal and policy reasons set forth above, and particularly for the danger it poses to Missouri's landowners, Grain Belt Express' application for a CCN should be denied.



Furthermore, if Grain Belt Express is granted a CCN, it should be barred from exercising the power of eminent domain to take private property for its private use, and should be required to provide for decommissioning from the first day of the project.

WHEREFORE, the Missouri Farm Bureau respectfully requests that the Commission reject Grain Belt Express' application.

Respectfully submitted,

HADEN & HADEN LLC



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**CERTIFICATE OF SERVICE**

I hereby certify the copies of the foregoing have been e-mailed to all parties on the official service list for this case on this 10<sup>th</sup> day of April, 2017.

A handwritten signature in blue ink, appearing to read "Brent E. Haden", is positioned above a horizontal line.

Brent E. Haden, Mo. Bar No. 54148