

**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 REMAND BRIEF**

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**INITIAL POST HEARING REMAND 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 company.

As set out below, MFB believes that this Commission should deny Grain Belt Express's application on remand. 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?

Missouri Farm Bureau's original briefing after the 2017 hearings in this matter addressed Farm Bureau's position regarding this issue, and MFB will stand its earlier briefing per the remand scheduling order in this matter. No new evidence has been set forth in the remand hearings that would change the legal analysis already set forth in MFB's earlier briefing, with the exception of any discussion of the prior necessity of county commission consent as a prerequisite to the issuing of a CCN. The latter issue has been definitively decided by the Supreme Court, and so prior briefing on that issue may be disregarded.

Missouri Farm Bureau would also specifically point out that the testimony of both Grain Belt and Invenergy witnesses on cross-examination during the recent remand hearings made it clear that the Invenergy purchase of Grain Belt is contingent on conditions precedent that have not yet occurred, including approval from both the Missouri Public Service Commission and the Kansas Corporation Commission. This means that funding from Invenergy, which is necessary for the completion of the project, may never materialize, and there is no guarantee that Grain Belt has the resources to complete the project as proposed. During the remand hearing, Grain Belt's witnesses stated their belief that other investors would fund Grain Belt to complete the project if Invenergy does not complete its purchase of Grain Belt, but refused to identify such investors. The lack of guaranteed funding to complete the project means that Clean Line does not

have sufficient financial resources, and the CCN should be denied for failing to meet the third *Tartan* criteria.

Finally, Missouri Farm Bureau is also in support of the briefing and arguments set forth by the Missouri Land Owners Alliance and Show Me Concerned Landowners, and would join both groups in the arguments set forth in their briefing to the Commission.

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.?

Missouri Farm Bureau’s original briefing after the 2017 hearings in this matter addressed Farm Bureau’s position regarding this issue, and MFB will stand on its earlier briefing per the remand scheduling order in this matter.

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 Express cannot be trusted with the power of eminent domain. The historical justifications for eminent domain use by utilities are not in place in this case. 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 private investors, and should not have the power to take the property of citizens through 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.

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

Respectfully submitted,

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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 9th day of January, 2019.



Brent E. Haden, Mo. Bar No. 54148