

**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 Transmission Line and an Associated Converter)
Station Providing an Interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

Case No. EA-2016-0358

**OPPOSITION OF GRAIN BELT EXPRESS CLEAN LINE LLC
TO MOTION OF THE EASTERN MISSOURI LANDOWNERS ALLIANCE
TO OFFER AN ADDITIONAL EXHIBIT AND TO SUBMIT ARGUMENT**

Grain Belt Express Clean Line LLC (“Grain Belt Express” or “Company”) files this Opposition to the Motion of the Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (“Show Me”) to Offer an Additional Exhibit and to Submit Additional Argument (“Motion”) to the Missouri Public Service Commission (“PSC” or “Commission”).

The Motion should be denied because there is no good cause to waive the Commission’s procedural rules to permit untimely, post-hoc arguments that could have easily been made while the record in this case was still open. In support of this Opposition, Grain Belt Express states as follows:

A. Expiration of the Purchase Option Has No Impact on Grain Belt Express’ Request for a Certificate of Convenience and Necessity

1. The Grain Belt Express Clean Line Project (“Project”) is a high-voltage, direct current (“HVDC”) transmission line project that will collect over 4,000 megawatts (MW) of low-cost, wind-generated power in western Kansas. See Ex. 100 at 3 (Skelly Direct); Ex. 108 at 4 & Sched. AWG-1 (Galli Direct). The Project will deliver 500 MW of power into Missouri and 3,500 MW into Illinois, Indiana and states further east. See Ex. 100 at 3 (Skelly Direct); Ex. 108 at 4, 7, 23, 27 (Galli Direct). In order to deliver power into Missouri, the Company proposes to construct a 500 MW converter station and associated alternating current (“AC”) interconnecting

facilities in Ralls County, Missouri. See Ex. 100 at 4 (Skelly Direct); Ex. 119 at 14 & Sched. JPG-2, Fig. 1 (Puckett Direct). The converter station is necessary to provide the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) with up to 250 MW of capacity from the Project pursuant to the Transmission Service Agreement between Grain Belt Express and MJMEUC. See Ex. 100 at 5, 8, 13-14 (Skelly Direct); Ex. 480 at 2-3 (Grotzinger Supp. Direct).

2. In the proceeding on remand, Company witness Hans Detweiler testified that Grain Belt Express owns an option to purchase land in fee simple in Ralls County on which to build the converter station. Tr. 2145. As noted in the Company’s previous application, the option agreement was recorded on June 3, 2014 with the Ralls County Recorder of Deeds. See Ex. 102 at 19 & Sched. MOL-14 (Lawlor Surrebuttal), In re Grain Belt Express Clean Line LLC, No. EA-2014-0207 (“2014 Case”).

3. On February 1, 2019, Invenergy Transmission LLC, on behalf of itself and its parent company Invenergy Investment Company LLC (together, “Invenergy”), as well as Grain Belt Express on behalf of itself and its parent company Grain Belt Express Holding LLC, submitted an Application requesting that the Commission approve a transaction involving a change in ownership of Grain Belt Express.¹

4. Since entering the transaction, Grain Belt Express and Invenergy have continued to engage in negotiations with the landowner who owns the real property subject to the recorded option in Ralls County, Missouri. The purpose of these negotiations is to agree to financial terms to extend the recorded option, which by its terms expired five years from the effective date, or enter into a new option. Despite these negotiations, Grain Belt Express, Invenergy, and the landowner have not yet been able to agree to terms for an extension of the option.

¹ In re Joint Application of Invenergy Transmission LLC, Invenergy Invest. Co. LLC, Grain Belt Express Clean Line LLC and Grain Belt Express Holding LLC for an Order Approving the Acquisition by Invenergy Transmission LLC of Grain Belt Express Clean Line LLC, No. EM-2019-0150.

5. Grain Belt Express and Invenergy remain committed to continuing negotiations to obtain a new option from the current landowner or obtain rights to property elsewhere in Ralls County to build the Missouri converter station. As Invenergy Senior Vice President Kris Zadlo testified during the remand proceedings, “it would be very difficult to fulfill MJMEUC’s contract without building a converter station in Missouri. So, yes, ... some sort of converter station will have to be built in Missouri.” Tr. 2033-34.

6. Moreover, Grain Belt Express has proposed that the Commission condition the certificate of convenience and necessity (“CCN”) on the Company constructing the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station. See ¶ 11, § II(E) at 83, Grain Belt Express Proposed Findings of Fact and Conclusions of Law on Remand.

7. Further, Grain Belt Express and Invenergy are committed to filing an updated application subject to further review and determination by the Commission if there are any material changes in the design and engineering of the Project from what is contained in the Company’s application for a CCN. See Grain Belt Express Reply Brief at 46 (Apr. 24, 2017); Ex. 147 at 5-6 (Zadlo Supp. Surrebuttal); Tr. 2025-26 (Zadlo). At this time there are no material changes to report.

8. The expiration of the option to purchase land in Ralls County does not have any impact on Grain Belt Express’s request for a CCN, as the Company continues to qualify as an “electrical corporation” due to its ownership or control of other property that is “used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power” See § 386.020(14).² Additionally, since Grain Belt Express and Invenergy remain committed to constructing a 500 MW converter station

² All statutory references are to the Missouri Revised Statutes (2016), as amended.

in Ralls County, the expiration of the option does not impact the need for the service offered by the Project or its economic feasibility.

9. In any event, Show Me's belated arguments, which are unsupported by legal citation, fail to rebut or distinguish black-letter Missouri law that easements held by the Company qualify as an interest in real estate, that the money held by Grain Belt Express (not Clean Line Energy Partners LLC) in connection with the Project constitutes personal property, and that the Company's county road-crossing assents, which the courts have referred to as franchises, are personal property. See Grain Belt Express Initial Post-Hearing Brief on Remand at 10-12.

B. There is No Good Cause to Accept Show Me's Late-Filed Exhibit and Such Acceptance Would Violate Due Process

10. "Good cause" requires "a substantial reason amounting in law to a legal excuse for failing to perform an act required by law" or "a substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties." See Order regarding Order to Show Cause at 2, In re Union Elec Co., No. EO-2010-0263 (Sept. 1, 2010) (quotations omitted). As the Commission has stated: "Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given 'must be real not imaginary, substantial not trifling, and reasonable not whimsical.'" Id. at 2-3, citing Belle State Bank v. Industrial Comm'n, 547 S.W.2d 851, 846 (Mo. App. S. D. 1977).

11. Here, Show Me makes no attempt to explain or provide factual support for its "legal excuse for failing to" comply with the Commission's October 24, 2018 Order Setting Supplemental Procedural Schedule, 4 CSR 240-2.130, or Section 536.070. Accordingly, Show Me has failed in the first instance to carry its burden of showing any "good cause" for waiver of these requirements.

12. Furthermore, Show Me’s request to submit an exhibit after the record has closed, without good cause, violates the due process rights of other parties. The parties are unable to cross-examine witnesses regarding the exhibit or otherwise respond to the new evidence. See § 536.070(2) (right to cross-examine and impeach witnesses, and to rebut evidence). For this reason, the Commission’s rules require the timely and orderly submission of evidence prior to or at the time of the hearing. 4 CSR 240-2.130(7)-(10).

13. Show Me makes the specious argument that good cause exists for granting its Motion because otherwise the Commission “would have been left in the dark.” Motion at ¶ 7. This is not true. As discussed above, Grain Belt Express and Invenergy are committed to notifying the Commission of material changes, once those changes are known. In this case, it is not yet known whether the location of the converter station will change, or what impact on the overall Project such a change would have. Consequently, there is no basis to provide notice of a material change in the design or engineering of the Project to the Commission at this time.

C. There is No Good Cause to Allow Show Me to Reverse Its Prior Position with Post-Hoc Arguments

14. Show Me has long known that the purchase option was set to expire in 2019. The Memorandum of Option Agreement was part of the record in the 2014 Case, which Show Me acknowledged in its Motion. See Ex. 102, Sched. MOL-14 (Lawlor Surrebuttal), 2014 Case; Motion at ¶ 3. Accordingly, Show Me could have addressed the pending expiration of the purchase option in its post-hearing briefs.

15. Additionally, the Motion’s new arguments are limited to whether the Company’s remaining easements, county assents, and cash qualify as “electric plant.” Grain Belt Express addressed those issues in its Initial Brief on Remand, in response to a question raised by

Commissioner Hall during the evidentiary hearing.³ There has been no change to the easements, county assents, and cash since the record in this case closed. Rather, Show Me’s Motion is an unabashed attempt to reverse its prior position on this issue and supplement its post-hearing briefs with arguments that could have easily been made a month ago.

16. In fact, in its Reply Brief on Remand, Show Me explicitly declined to address whether easements, county assents, and cash qualify as “electric plant,” stating:

The permission from the Illinois Commission to build the Grain Belt line in that state was rejected by the Illinois appellate court in *Concerned Citizens v. Illinois Commerce Comm’n*, 112 N.E.3d 128 (Ill App. 2018). As Grain Belt notes, the basis for that decision essentially was that Grain Belt did not qualify as an electrical utility because it did not own, control, operate or manage any electric plant within the state of Illinois.

Grain Belt then spends five pages distinguishing that case from its situation in Missouri, in particular arguing that its 39 easements in Missouri constitute electric plant, thus qualifying Grain Belt as an electrical utility in this state.

Their entire argument misses the point, at least with regard to the positions taken on this issue by Show Me and the MLA. The fact is, neither Show Me nor the MLA have ever argued that the logic of the *Concerned Citizens* case in Illinois should be applied in Missouri. ...

Having no substantive quarrel with Grain Belt’s sole argument on this point, Show Me and the MLA are left with nothing to say in reply.⁴

Thus, Show Me *agreed* that the easements, county assents, and cash held by Grain Belt Express are “electric plant” for the purpose of qualifying the Company as a “public utility” under Missouri Law. Now, through its late-filed Motion, Show Me attempts to completely reverse its prior position on this issue. This incredible about-face should be flatly rejected as an affront to the Commission’s principled and orderly legal process.

³ Initial Post-Hearing Brief on Remand of Applicant Grain Belt Express Clean Line LLC at 9-13. See Tr. 1780-82.

⁴ Post-Hearing Reply Brief on Remand of Missouri Landowners Alliance and Show Me Concerned Citizens at 4-5 (internal citations omitted) (emphasis added). It should be noted that the discussion of Concerned Citizens in Grain Belt Express’s Initial Brief on Remand was also in response to the questions raised by Commissioner Hall. Tr. 1780-82.

WHEREFORE, the Commission should deny Show Me's Motion and strike from the record the post-hoc arguments therein.

Respectfully Submitted,

/s/ Karl Zobrist

Karl Zobrist MBN 28325
Jacqueline Whipple MBN 65270
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: (816) 460-2400
Fax: (816) 531-7545
karl.zobrist@dentons.com
jacqueline.whipple@dentons.com

Frank A. Caro, Jr. MBN 42094
Anne E. Callenbach MBN 56028
Andrew O. Schulte MBN 62194
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
(816) 572-4754
fcaro@polsinelli.com
acallenbach@polsinelli.com
aschulte@polsinelli.com

ATTORNEYS FOR GRAIN BELT EXPRESS
CLEAN LINE LLC

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 19th day of February 2019.

/s/ Karl Zobrist
Attorney for Grain Belt Express Clean

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