

Exhibit No. 112
**Issues: Business Model; Need,
Economic Feasibility and Public Interest**
Witness: Suedeem Kelly
Type: Surrebuttal Testimony
Sponsoring Party: Grain Belt Express Clean Line LLC
Case No.: EA-2016- 0358
Date of Testimony: February 21, 2017

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EA-2016- 0358

SURREBUTTAL TESTIMONY OF

SUEDEEN G. KELLY

ON BEHALF OF

GRAIN BELT EXPRESS CLEAN LINE LLC

GB Exhibit No. *112*
Date *2-21-17* Reporter *KCB*
File No. *EA-2016-0358*

February 21, 2017

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

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

3 A. My name is Suedeen G. Kelly. I am an attorney in private practice with the firm of Akin
4 Gump Strauss Hauer & Feld LLP, where I serve as Chair of its Energy Regulation,
5 Markets and Enforcement practice. My business address is 1333 New Hampshire
6 Avenue, N.W., Washington, DC.

7 **Q. Have you previously submitted testimony and exhibits in this proceeding?**

8 A. Yes, I submitted my direct testimony on August 29, 2016.

9 **Q. What is the purpose of this surrebuttal testimony?**

10 A. The purpose of my surrebuttal testimony is to respond to comments made in the Missouri
11 Public Service Commission Staff Rebuttal Report (the "Report") dated January 24, 2017.

12 **II. THE REPORT RAISES ISSUES THAT ARE ASSIGNED TO FEDERAL**
13 **AUTHORITIES**

14 **Q. Do you have any overall observations regarding the Report?**

15 A. Yes. As a former Commissioner and Chairwoman of the New Mexico Public Service
16 Commission and a former Commissioner on the Federal Energy Regulatory Commission
17 ("FERC"), I was surprised at the amount of discussion in the Report regarding matters
18 that are within the purview of federal authorities.

19 **Q. What are examples of this?**

20 A. The Report discusses at pages 22 through 29 issues related to Regional Transmission
21 Organization ("RTO") interconnection studies and operational procedures, including
22 Grain Belt Express' interconnections with the Midcontinent Independent System
23 Operator, Inc. ("MISO"), Southwest Power Pool, Inc. ("SPP") and PJM Interconnection,
24 L.L.C. ("PJM"). MISO, SPP and PJM are overseen by FERC, and their interconnection

1 procedures are part of their FERC-approved tariffs.¹ Below, I rebut several of the
2 Report's opinions regarding these topics and the Report's speculation regarding their
3 effect on Grain Belt Express. However, I would like to highlight a general point before I
4 do so. RTO interconnection studies and operational procedures are issues which the
5 Missouri Public Service Commission ("Commission") can monitor and review as a
6 member of the Organization of MISO States, for example, but which are peripheral to the
7 decisions it must make regarding the Application of Grain Belt Express for a Certificate
8 of Convenience and Necessity ("CCN"). The Commission can rely on FERC to oversee
9 the RTOs' interconnection processes and ensure that the Grain Belt Express Project
10 ("Project") is safely interconnected with SPP, MISO, and PJM. FERC is charged with
11 ensuring that transmission service is offered on just, reasonable, and non-discriminatory
12 terms.² FERC, together with the North American Electric Reliability Council ("NERC")
13 and the regional reliability entities, is also responsible for preserving reliability on the
14 Bulk Electric System.³ The Commission can rely on these entities to oversee Grain Belt
15 Express' adherence to the applicable reliability standards.

16 **Q. The Report claims that MISO does not yet have a fully developed process for**
17 **uploading energy at the Missouri converter and exporting it from MISO. Is this**
18 **likely to pose a problem for Grain Belt Express?**

19 A. No. FERC precedent and regulations require that MISO provide open access
20 transmission service to all customers, so MISO will either adopt a new process or adapt

¹ Dr. Galli discusses RTO interconnections at some length in his Surrebuttal Testimony, pointing out, in particular, that Grain Belt Express cannot interconnect with the grid in SPP, MISO or PJM without authorization from the entities responsible for ensuring reliability in the RTOs. Galli Surrebuttal Testimony at Section II.

² See 16 U.S.C. § 824d (Federal Power Act § 205); 16 U.S.C. § 824e (Federal Power Act § 206).

³ 16 U.S.C. § 824o.

1 an existing one to accommodate Grain Belt Express. MISO conducts a robust
2 stakeholder process and regularly makes filings with FERC to adopt new rules and
3 processes. MISO also regularly revises its business practices manuals after review by
4 stakeholders and consideration of their comments and criticism.⁴ To the extent any
5 person is aggrieved by the MISO process, it can file a complaint with FERC under
6 Section 206 of the Federal Power Act.⁵

7 **III. GRAIN BELT EXPRESS' PARTICIPANT FUNDING MODEL IS**
8 **ECONOMICALLY FEASIBLE**

9 **Q. On page 42 of the Report, Staff “recommends that the Commission determine if the**
10 **Project’s service is an improvement that justifies its cost.” Do you agree with this**
11 **recommendation?**

12 A. No. Whether a project’s service justifies its cost is not relevant when evaluating a
13 participant-funded project. As I explained in my Direct Testimony,⁶ regulators
14 traditionally have had to concern themselves with the cost of a transmission project
15 versus its benefits because of their responsibility to protect the state’s captive customers
16 from unjust and unreasonable rates. But when evaluating a participant-funded project,
17 captive customers are not at risk:

18 [W]hen a regulator is asked to approve a CCN for a participant-funded
19 transmission company, there is no concern about protecting captive
20 customers. Unlike captive customers of a traditional utility that the
21 regulator is charged with protecting, the customers of a participant-funded
22 transmission company do not need to be protected from the imposition of
23 the cost of the new transmission. They have freely chosen to contract for
24 service on the transmission lines; they have become customers because
25 they themselves have determined that they “need” the transmission

⁴ In his Surrebuttal Testimony, Dr. Galli observes that MISO stakeholders are already developing a process for requesting, studying, and assigning energy withdrawal rights in MISO. Galli Surrebuttal Testimony at 33.

⁵ 16 U.S.C. § 824e(a).

⁶ Kelly Direct Testimony at 21-23.

1 service. They have decided that the benefit of buying the service
2 outweighs the contractual cost.⁷

3 **Q. Referring to your Direct Testimony, the Report states on page 29 that it “does not**
4 **agree” that the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”)**
5 **“demonstrates participant funding to satisfy the economic feasibility consideration**
6 **as proposed by Grain Belt.” Does the Report accurately characterize your**
7 **testimony?**

8 A. No. I did not claim in my Direct Testimony that the MJMEUC contract, by itself,
9 demonstrated the economic feasibility of the Project.

10 When I explained why the Project is economically feasible, I first observed that
11 the question of economic feasibility should be viewed differently by a state commission
12 when evaluating a participant-funded project. As I explained above and in my Direct
13 Testimony, in the case of a participant-funded project like Grain Belt Express, it is “the
14 *project developer*, and not the public, [that] will suffer a loss” if the project is not
15 successful.⁸ Participant-funded projects are therefore “economically feasible from the
16 perspective of the Missouri public, which will receive the benefits of the project, without
17 assuming the risk that it will cost more to construct or earn a lower profit than
18 expected.”⁹

19 Although I do not believe that the Commission needs to concern itself whether the
20 Project will be “economically feasible” for Grain Belt Express or its investors, my Direct
21 Testimony also explored the question of economic feasibility from Grain Belt Express’
22 perspective, as a business venture. As I explained in my Direct Testimony at page 30:

⁷ Kelly Direct Testimony at 22.

⁸ *Id.* at 29 (emphasis in original).

⁹ *Id.* at 29-30.

1 The other way to approach the question of “economic feasibility” is to
2 determine whether or not a project is a viable business venture. From a
3 regulator’s perspective, in the case of a participant-funded project, this is
4 not a relevant question, because the public is not footing the bill, and the
5 project developers have voluntarily assumed the risk of failure. That said,
6 Grain Belt Express has presented substantial facts showing that the Project
7 is economically feasible as an independent business venture.¹⁰

8 I went on to explain that, because the public will not bear the risk of economic
9 loss, the Commission need not concern itself with the “economic feasibility” of the
10 Project from the viewpoint of Grain Belt Express’ investors:

11 Whether the Project is likely to be a successful investment for Grain Belt
12 Express’ investors should not be of any concern to the Commission, which
13 has no responsibility for protecting the voluntary investors in Grain Belt
14 Express, and which is not in a better position to evaluate the success of the
15 investment than the voluntary investors themselves. In other words, the
16 Commission has no reason for, or basis for, “second-guessing” the
17 investors, who believe that investment in the Grain Belt Express will be
18 successful—or they wouldn’t be investing.¹¹

19 Nevertheless, I then examined the facts that Grain Belt Express had presented to
20 show that the Project is “economically feasible as an independent business venture.”¹² I
21 mentioned the MJMEUC contract as part of this evidence on pages 31-32 of my Direct
22 Testimony. However, although the Report accurately quotes my testimony, its analysis
23 disregards much of what I said. As quoted in the Report on page 29, I testified that:
24 “Taken together, the MJMEUC contract, the successful open solicitation, and the cost
25 competitiveness of wind power delivered by the Project, provide additional strong
26 evidence that Grain Belt Express is financially viable.” But the Report focuses
27 exclusively on the MJMEUC contract, entirely ignoring the results of the open

¹⁰ *Id.* at 30.

¹¹ *Id.* at 31.

¹² *Id.* at 30.

1 solicitation, which were summarized in my Direct Testimony at pages 24 through 26, and
2 discussed at length in Mr. Berry's Direct Testimony.¹³

3 Grain Belt Express has received [transmission service requests] from
4 fifteen different entities, which ask to reserve a total of 3,524 MW of
5 capacity on its transmission line from Kansas into Missouri, or more than
6 6.5 times the Project's available Kansas-to-Missouri capacity. The total
7 capacity requested to move power to delivery points in MISO and PJM is
8 20,825 MW, or more than 4.5 times the Project's available capacity.¹⁴

9 Contracts have yet to be signed for the capacity in the open solicitation because
10 shippers typically do not agree to significant transmission service commitments until the
11 route of the line is established and the project has received all relevant authorizations.
12 Nevertheless, Grain Belt Express has presented substantial evidence that shippers are
13 likely to buy transmission service on the Project once the necessary approvals are
14 received.¹⁵ Importantly, the open solicitation demonstrates that the demand for the
15 Project is several times greater than its total design capacity, and that it is likely that the
16 Project will be fully subscribed when it goes into operation.

17 **Q. The Report on pages 30-31 takes issue with your statement that Missouri will not**
18 **bear the risk of the Project, and cites to Mr. Berry's Direct Testimony, which states**
19 **that Grain Belt Express will not seek to recover costs through MISO or SPP regional**
20 **cost allocation. Does his testimony contradict yours?**

21 A. No. Mr. Berry's Direct Testimony is consistent with mine. Grain Belt Express bears the
22 economic risk of the Project because it will be unable to recover its costs through
23 regional cost allocation unless it is *expressly authorized by this Commission*. Therefore,

¹³ Berry Direct Testimony at 24-25.

¹⁴ Kelly Direct Testimony at 25.

¹⁵ See, e.g., Berry Direct Testimony 23-43.

1 the Missouri public will only be allocated costs if the Commission decides that it is in the
2 interest of the State and the public to approve a regional cost allocation for the Project.

3 **Q. The Report claims on page 22 that because the RTO Interconnection “studies are**
4 **incomplete, any potentially necessary transmission upgrades are unknown, and**
5 **Staff is unable to determine the economic feasibility of the Project.” Are these**
6 **concerns regarding interconnection costs valid?**

7 A. No. From the perspective of the Missouri public, the interconnection costs will have no
8 effect on the economic feasibility of the Project. In an RTO, interconnection costs are
9 borne by the interconnecting generator or transmission line, so these costs will generally
10 not be recovered from non-subscribing Missouri ratepayers.¹⁶ To the extent that these
11 costs might impact the financial viability of the Project as a business venture, then this
12 would be taken into account by Grain Belt Express and its investors in deciding whether
13 to move forward with the Project. However, as both Mr. Berry and Dr. Galli explain in
14 their testimony, the studies and due diligence that have been performed to date show that
15 these costs do not affect the financial viability of the project, even if they turn out to be
16 higher than expected.¹⁷

17 **IV. THE GRAIN BELT EXPRESS WILL FACILITATE THE CONSTRUCTION OF**
18 **LOW-COST WIND GENERATION**

19 **Q. The Report takes issue on page 38 with your testimony that the Project will reduce**
20 **wholesale energy prices, noting that “a simple reduction in wholesale electricity**

¹⁶ As Mr. Galli explains, there is currently no mechanism for partial cost allocation of network upgrades associated with an HVDC project. Galli Surrebuttal Testimony at 4. It is possible that MISO might implement such a mechanism but doing so would require that the mechanism go through the MISO stakeholder process and then be approved by FERC. Even if that occurs, the Report acknowledges that these amounts are “not likely to be of such a magnitude to impact the economic feasibility of the Project one way or the other.” Report at 31.

¹⁷ Galli Surrebuttal Testimony at 5; Berry Surrebuttal Testimony at 28-29.

1 **prices does not necessarily result in a reduction to retail rates due to the offset of off-**
2 **system sales.” Does this observation affect your testimony?**

3 A. No. In my Direct Testimony at page 32, I relied upon Mr. Copeland’s Direct Testimony,
4 which took off-system sales into account (as he states in his Surrebuttal Testimony).¹⁸ I
5 stated that the Project will reduce wholesale electricity prices and, therefore, the cost that
6 Missouri utilities incur to serve their customers.¹⁹ My Direct Testimony did not claim
7 that a reduction in wholesale energy prices will immediately result in a one-to-one
8 reduction in retail rates. However, reducing the cost for Missouri utilities to serve their
9 load should eventually reduce the retail rates of their customers who are charged cost-of-
10 service rates. The lower the costs incurred by Missouri utilities, the lower the retail rates
11 they must charge to recover those costs.

12 **Q. The Report claims on page 38 that your testimony “conflates the addition of wind**
13 **generation that may or may not occur otherwise with the Project itself.” Is the**
14 **construction of additional wind generation dependent on the Project?**

15 A. To a large extent, yes, it is. The construction of additional wind generation in western
16 Kansas and other areas that have abundant high-capacity wind is unlikely to occur
17 without the construction of additional large-scale transmission. As shown by the results
18 of Grain Belt Express’ open solicitation, there is a high demand for transmission capacity
19 in these areas in order to get the wind to market. Without additional transmission
20 capacity, wind developers will be unable to obtain financing to construct more generation
21 in these areas. It is therefore perfectly reasonable to credit the Project with facilitating

¹⁸ Copeland Surrebuttal Testimony at 2.

¹⁹ Kelly Direct Testimony at 3, 32.

1 wind development and to count the benefits of that development among the benefits of
2 the Project.

3 **V. THE GRAIN BELT EXPRESS WILL PROVIDE RELIABILITY AND MARKET**
4 **BENEFITS**

5 **Q. The Report asserts on page 39 that the Project will not address Missouri's existing**
6 **seams issues, and references your testimony. Does this part of the report fairly**
7 **characterize your testimony?**

8 **A.** I did not state in my testimony that the Project would resolve Missouri's existing seams
9 issues. My discussion on the effect of interregional transmission on seams did not
10 concern the Missouri-specific problems of potentially uncompensated flows,²⁰ but rather
11 the general economic burden imposed by seams issues and the value provided to the
12 public by linking regions with interregional transmission.

13 Underinvestment by regional planning processes in connections between regions
14 is one of the major reasons for seams problems. Investment in interregional transmission
15 does not necessarily remediate existing seam-related problems, but it does allow power to
16 bypass existing seams. Interregional transmission provides multiple economic and
17 reliability benefits by allowing movements of power between regions that would
18 otherwise be infeasible or impossible due to the limitations imposed by existing regional
19 boundaries.

20 **Q. The Report claims, at page 41, that Grain Belt Express has made conflicting**
21 **assertions with regard to whether the Project will be available and that the Project**
22 **will not be available to transmit power between SPP, MISO and PJM. Do you see a**
23 **conflict in Grain Belt's Testimony and representations on this matter?**

²⁰ Report at 39; Kelly Direct Testimony at 32.

1 A. Based on the Direct Testimony of the witnesses and the conversations recounted in the
2 Report, there is no conflict. As Dr. Galli explains, the required procedures are already in
3 place in SPP and PJM, and MISO has a mechanism for point-to-point transmission
4 service that could be used for exporting power.²¹ As I explained above, to the extent that
5 MISO does not yet have processes that allow such transfers, new processes will be
6 developed if needed as the Project moves forward. Moreover, to the extent that persons
7 are aggrieved by the processes devised by MISO (or another RTO), there is recourse
8 available at FERC. I concur with Dr. Galli's statement that "RTOs regularly develop
9 new processes to manage their interactions with adjacent transmission systems," and that
10 "transmission flow into or from Grain Belt Express is not impossible just because a new
11 RTO process may be needed."²²

12 **Q. The Report states on page 40 that your testimony "does not indicate that MISO is**
13 **studying the Project as a generator, as opposed to studying it as a 'transmission**
14 **line.'" Does it make a difference, from Missouri's perspective, whether MISO**
15 **studies the Project as a generator or a transmission line?**

16 A. No. MISO thoroughly studies both transmission lines and generators to determine
17 whether those new facilities can safely and reliably connect to the grid. Therefore,
18 whether the Project is studied as a generator or as a transmission line makes no
19 difference. These study procedures are governed by MISO's FERC-approved tariff and
20 NERC's reliability standards.

21 **Q. Does this conclude your surrebuttal testimony?**

22 A. Yes it does.

²¹ Galli Surrebuttal Testimony at 33.

²² Galli Surrebuttal Testimony at 34

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, Control,) Case No. EA-2016-0358
Manage, Operate 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)

AFFIDAVIT OF SUEDEEN G. KELLY

STATE OF District of Columbia)
COUNTY OF Washington) ss

Suedeem G. Kelly, being first duly sworn on his oath, states:

1. My name is Suedeem G. Kelly. I am the Chair of the Energy Regulation, Markets and Enforcement Practice at Akin Gump Strauss Hauer & Feld LLP.
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Grain Belt Express Clean Line LLC consisting of 12 pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

Suedeem G. Kelly
Suedeem G. Kelly

Subscribed and sworn before me this 21st day of February 2017.

Deborah A. Johnson
Notary Public

My commission expires: June 14, 2020

DEBORAH A. JOHNSON
Notary Public of District of Columbia
My Commission Expires June 14, 2020

