

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Working Case Regarding)	
Amendments to the Commission's Ex Parte)	File No. AW-2016-0312
And Extra-record Communications Rule)	

COMMENTS OF THE MISSOURI LANDOWNERS ALLIANCE

Comes Now the Missouri Landowners Alliance (MLA), pursuant to the Commission's Orders in this case of June 8 and June 28, 2016, and respectfully submits these comments regarding the Commission's proposed amendments to its Ex Parte and Extra-Record Communications Rule.

The MLA is a Missouri non-profit, grass-roots organization with over 800 members. It was organized to oppose the high-voltage transmission line which Grain Belt Express is attempting to build across eight counties in northern Missouri. The MLA intervened and participated in Commission case No. EA-2014-0207, in which Grain Belt was denied a Certificate of Convenience and Necessity (CCN) to build its line.

The MLA supports the proposed amendments which were published with the Commission's Order of June 8, 2016, and believes that the changes should facilitate more productive communications between and among the Commission, the General Assembly and other interested parties on matters of general regulatory policy.

The MLA also takes this opportunity to suggest an additional amendment to the Commission's ex parte rules. Although this revision is not directly related to those being proposed by the Commission, the MLA respectfully suggests that the change would promote a greater sense of fairness and equality for the parties in contested cases before the Commission.

By way of background, in a formal complaint with the Commission two years ago, the MLA argued that the Commission's ex parte rules should be applied so as to preclude a party to a contested case from promoting its position on contested issues through the press and social media.¹ The Complaint alleged that Grain Belt Express was pursuing a multi-media effort to build public support for their position on issues to be litigated in its CCN case at the Commission, with the hope that they could thereby influence the outcome of that proceeding. The Commission disagreed with the MLA's interpretation of the ex parte rules, and dismissed the complaint.²

The MLA respects that decision, and is not seeking here to undo the basic ruling in that case. However, we do respectfully ask the Commission to consider a much narrower restriction than that advocated earlier by the MLA. Specifically, the MLA is proposing that the following provision (or something substantially similar thereto) be added to the Commission's ex parte rule, perhaps as a new section 4 CSR 240-4.020(5):

Between the time a contested case is submitted for decision to the commission, and the time the commission finally disposes of the case (including, if applicable, a ruling on motions for rehearing and reconsideration) no party may promote its position on any substantive issue in the case in such a way that a commissioner could reasonably be expected to read or hear such comments. Examples of activity covered by this provision are statements to or interviews with the media.

This change would not affect the right of the parties to argue and promote their positions on contested issues in the press and social media throughout a contested proceeding – until the case is finally submitted for decision to the Commission.

There is a legitimate reason for this distinction. Before the case is submitted to the Commission, all parties presumably have an opportunity in testimony and briefs to

¹ Case No. EC-2014-0251.

² Id., Order Granting Motion to Dismiss, May 21, 2014.

counter any claims being made by an opposing party outside the hearing process. After that point, however, the schedule would normally provide no means for doing so. And any special attempt to bring the matter to the attention of the Commission at that point might only serve to highlight the very statements complained of.

The MLA understands that the traditional parties to Commission proceedings, including Staff, Public Counsel and regulated Missouri utilities, do not generally promote their positions through the media on contested issues while a case is pending -- much less after a case is submitted for decision to the Commission. But such was not the case for Grain Belt when it was seeking the CCN in Case No. EA-2014-0207.

As the Commission will recall, after that case had been briefed and submitted for decision, at an agenda session on June 2, 2015 the Commission tentatively voted 3 to 2 against granting Grain Belt the CCN it was seeking there. That vote was followed by a number of Commission Orders and responses by the parties on several procedural matters.

Apparently concerned about its prospects at that point, Grain Belt chose once again to promote its case outside the bounds of the Commission hearing process. Prior to the issuance of the Commission's final Report and Order, the June 28, 2015 edition of the Columbia Daily Tribune carried the following remarks from Grain Belt:

"If there's no project, there are no jobs," Michael Skelly, president of Clean Line, said. Skelly said the company might try to pursue approval for the project through the Department of Energy if the PSC rejects it. "There's also a chance we might abandon the project," he said.³

³ See final paragraphs of Exhibit 1 hereto, at page 8 of these Comments.

Coming from the President of Grain Belt's parent company, it would be quite naive to believe those remarks were not intended to reach and to influence the Commission.

Then shortly after the final Report and Order was issued on July 1, Grain Belt's witness Mark Lawlor complained to a number of media outlets that the unfavorable decision resulted from "confusion" on the part of the Commission majority.⁴ Those remarks were thus in circulation when the Commission later considered Grain Belt's Motion for Rehearing.

Non-party supporters and opponents of the line were also quoted by the press during this time period. But of course those individuals are beyond the reach of the Commission's ex parte and extra record rules.

That is not the case with Grain Belt, however. Their extra-record comments were undoubtedly intended to reach the Commissioners as they were deliberating the final stages of the CCN case. At the very least, Grain Belt certainly realized that their remarks could make their way to one or more of the Commissioners at a critical juncture in the case.

The parties have no way of knowing if such statements reach their intended targets, or if they do, whether they simply fall on deaf ears. But in any event, fundamental fairness should allow each party to walk away from a case believing that a decision was reached solely on the basis of evidence duly presented at the hearings. No

⁴ In the July 2, 2015 edition of the Columbia Tribune, Mr. Lawlor is quoted as saying "there was confusion among commissioners about Clean Line's business model...." (Exh. 2, p. 1; Comments p. 10). In the July 1, 2015 edition of the Hannibal Courier-Post he is quoted as saying "there appears to be some confusion by a majority of commissioners about the benefits of this project to Missouri." (Exh 3, p. 2; Comments p. 14). And in the July 1, 2015 edition of the Kansas City Star, Mr. Lawlor is quoted as saying "The commissioners were confused about the benefits to the state of Missouri." (Exhibit 4, p. 2; Comments p. 17)

party should be left to wonder if they lost because they were outmaneuvered in a media endgame.

The MLA is not claiming that Grain Belt's comments to the press were in violation of the Commission's ex parte rules. But we respectfully suggest that they should have been. Presumably, the Grain Belt officials would not have been allowed to present those same remarks to the Commission in person at the final agenda sessions. But a party should not be allowed to accomplish indirectly what they would be barred from doing directly.

As noted in an Initial Decision last year at the FERC:

As a general proposition, the cases that are discussed above suggest that when utilities are seeking selection or CPCN approvals from governmental entities, the utilities should rely on the established governmental approval processes to persuade the officials and not indulge in collateral efforts such as public education, outreach and advertising activities.⁵

Finally, the MLA's proposal here is not intended as an "anti-Grain Belt" initiative. Grain Belt just happens to have provided poignant examples of the type of self-promotional, extra-record statements which the MLA believes should have no place in the final stages of Commission proceedings. The intent here, instead, is to foster a fair result for all parties in contested Commission cases.

Respectfully submitted,

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⁵ Initial Decision, Potomac-Appalachian Transmission Highline, LLC and PJM Interconnection, L.L.C., 152 FERC ¶ 63,025, par. 33, September 14, 2015.

EXHIBIT 1

Grain Belt supporters make late push for project

By **JODIE JACKSON JR.**

Sunday, June 28, 2015 at 12:00 am [Comments \(1\)](#)

CENTRALIA — As the owner of a trucking and ready-mix concrete company, Cindy O’Laughlin said she is keenly aware that rural Missouri needs jobs, tax revenue and incentives for businesses and residents not to leave their communities.

Those are the primary reasons that O’Laughlin, who owns Leo O’Laughlin Inc. in Shelbina, supports the Grain Belt Clean Line Express. The proposed \$2 billion, 780-mile transmission line would carry wind-generated electricity from Kansas through Missouri and Illinois to Indiana.

The project needs regulatory approval in Missouri and Illinois. The staff of the Missouri Public Service Commission has recommended rejecting Clean Line Energy’s application for a certificate of convenience, the document that is necessary to start the project in Missouri.

Clean Line officials, along with business partners and supportive landowners, gathered Thursday at Hubbell Power Systems in Centralia to tout the benefits of the project. The PSC is expected to make a decision on the Grain Belt transmission line project in the coming weeks and has stopped collecting public comment and evidence in the case.

“A project of this size hasn’t come through in 10 or 15 years,” O’Laughlin said. There’s no guarantee that her company would be awarded a bid for part of the job, but the project potentially could create work for her 40 employees.

“We just want an opportunity,” O’Laughlin said. Her company has locations in Shelbina, Macon and Marceline — along the Highway 36 corridor — in counties that have dwindling tax bases, she said.

The counties and communities along the proposed Grain Belt transmission route, which bisects the southern portion of Randolph County, need tax revenue for schools, ambulance and library districts, and other entities, O’Laughlin said. Without projects like Grain Belt, she said, it’s not clear what will generate that revenue.

Thousands of property owners oppose the proposed project. Many cite concerns over land condemnation and eminent domain authority for Clean Line Energy if the PSC approves the project.

Randolph County resident Donna Inglis said Thursday that she supports the Grain Belt Express, which would cross through her 125-acre farm. She said the company has offered more compensation — which she had not accepted — than three pipeline companies that have easements on her farm.

“Our neighbors and some friends are opposed to it,” she said. Inglis said some people have been “fear-mongering”

http://www.columbiatribune.com/news/local/grain-belt-supporters-make-late-push-for-project/article_754a93ac-3234-5581-b7bd-118fb3f010... June 28, 2015

to flame opposition to the project. "That doesn't set well with me."

She said some opponents claim the transmission line will give kids leukemia, kill crops and keep cows from producing milk. "That's not based on fact," she said. Inglis said she tries to help neighbors and friends see what she believes are the benefits of the project and the preference for renewable energy.

More than 1,000 people, including Columbia Mayor Bob McDavid, have signed support letters asking the PSC to approve the project. The majority of the 7,000 public comments submitted to the PSC oppose the project.

Mark Lawlor, director of development for Clean Line Energy, said the Grain Belt Express line will deliver 500 megawatts of power — enough for about 200,000 Missouri homes each year — to the state. Lawlor said the project, which would begin sometime in 2017 if approved, would help the state meet voter-mandated carbon reduction and renewable energy targets.

Grain Belt officials estimate \$77 million in labor income and \$6.4 million in property tax revenue in the first year of operation.

Houston-based Clean Line Energy said Thursday that it had reached an agreement with Kansas City-based PAR Electrical Contractors Inc. to have PAR build the project. Clean Line officials did not provide financial terms of the partnership.

Hubbell Power Systems, which previously agreed to make insulators and hardware for the transmission towers, would invest about \$8 million in its Centralia plant. Other Missouri companies have committed to providing jobs and investment in the project. A Grain Belt fact sheet says PAR will manage the 1,315 construction jobs created each year during construction.

"If there's no project, there are no jobs," Michael Skelly, president of Clean Line, said. Skelly said the company might try to pursue approval for the project through the Department of Energy if the PSC rejects it.

"There's also a chance we might abandon the project," he said.

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EXHIBIT 2

Public Service Commission votes down Grain Belt project

By **JODIE JACKSON JR.**

Thursday, July 2, 2015 at 2:00 pm [Comments \(17\)](#)

Neither supporters nor opponents of the Grain Belt Express are declaring the project completely derailed, despite the Missouri Public Service Commission on Wednesday rejecting the transmission line that would carry wind energy from the plains across Missouri.

Commissioners voted 3-2 to deny an application to greenlight the proposed \$2 billion, 780-mile transmission line that would carry wind-generated electricity from Kansas through Missouri and Illinois to Indiana. Grain Belt officials said the line would provide power for up to 200,000 Missouri homes while creating hundreds of jobs — including additional work at Hubbell Power Systems in Centralia — and millions of dollars in property tax revenue.

Staff had suggested rejecting the application, filed by Clean Line Energy. The transmission line would bisect the southern part of Randolph County, where several landowners expressed strong opposition to the project.

The PSC order to deny parent company Clean Line's application for a certificate of convenience and public necessity said Clean Line did not present evidence to prove that the project would benefit the state. The order also noted the "substantial opposition to the project" expressed by business owners, landowners and farmers.

"The evidence shows that any actual benefits to the general public from the project are outweighed by the burdens on affected landowners," the order stated.

PSC staff recommended denial of the application and said Clean Line's claims about lowering electric prices and meeting renewable energy standards were "not sufficiently supported by the record."

Mark Lawlor, director of development for the Grain Belt project, said Clean Line officials were reviewing the commission's order.

"It's too early to announce the next move, but we would definitely say that there will be a 'next move,'" Lawlor said Thursday morning. Clean Line "will find a way to move forward. It's simply too important to the state of Missouri not to."

He said there was confusion among commissioners about Clean Line's business model as a merchant transmission line, which puts the investment risk for the project on the company and shareholders and not on customers paying the electric rates.

http://www.columbiatribune.com/news/local/public-service-commission-votes-down-grain-belt-project/article_7a67b29f-1bc7-5ff2-be9f-a07f03... November 23, 2015

"We need to more clearly articulate the exact need that's out there and the precise benefits" to the state, he said. Lawlor wasn't sure whether Clean Line will ask for a rehearing or refile the case.

A certificate from the PSC is necessary for Clean Line to use eminent domain to obtain easements from landowners unwilling to voluntarily enter an agreement. The project would have required easements from about 500 landowners in Missouri. The Grain Belt project won approval from Kansas regulators in 2011 but still needs approval in Missouri and Illinois.

Jennifer Gatrel, who was part of the Block Grain Belt Express organization that opposed the application, said the PSC commissioners apparently believed the proposed line is not needed by the people of Missouri.

"Grain Belt does have additional options it might pursue," Gatrel said in an email. "We, however, are confident that we can succeed in preserving" the PSC's "decision."

PSC spokesman Kevin Kelly said Clean Line officials could file an application for a rehearing with the PSC within 10 days from the commission's order.

Cindy O'Laughlin, who owns Shelbina-based Leo O'Laughlin Inc., said she was "very disappointed" in the PSC's decision. She had hoped to bid for work on the project to benefit her 40 employees as well as the rural communities along the proposed Grain Belt Express transmission line route.

"We're largely rural, so how do we continue to provide necessary services and have good roads and schools?" she said. "Yet we run off an opportunity like this. It's a very poor decision."

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The Missouri Public Service Commission denied a crucial certificate for a multi-state wind-powered transmission line proposal that would pass through Ralls County if built.



COMMENT 1 Recommend 16



Clean Line Energy President Michael Skelly stands in front of the converter station near the Grain Belt Express.

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The Missouri Public Service Commission denied a crucial certificate for a multi-state wind-powered transmission line proposal that would pass through Ralls County if built.

Commissioners voted 3-2 on Wednesday to deny a Certificate of Convenience and Necessity for

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the Clean Line Energy Partners Grain Belt Express Clean Line proposal, Missouri Public Service Commission spokesperson Kevin Kelly said. Supporters and opponents of the \$2 billion proposal prepared to pore through each paragraph of the commission's order to determine what the future might hold.

Commissioners assessed specific criteria for the decision to grant or deny the certificate: there must be a need for the proposed service and it must "promote the public interest"; the applicant must be qualified to provide the proposal and possess the financial ability to complete a proposal that is economically feasible.

The commission determined that Clean Line Energy Partners demonstrated its qualifications and financial ability related to the proposal, but the commissioners decided the proposal did not satisfy the remaining stipulations.

"In this case the evidence shows that any actual benefits to the general public from the Project are outweighed by the burdens on affected landowners. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the Project as described in its application for a certificate of convenience and necessity promotes the public interest," according to a Missouri Public Service Commission written release.

Clean Line Energy Partners representatives told commissioners about the proposal's "enormous benefits" to Missouri, including potential jobs, annual tax revenue for counties in the proposed path and meeting future EPA clean energy requirements, Director of Development Mark Lawlor said.

"There appears to be some confusion by a majority of commissioners about the benefits of this project to Missouri," Lawlor said.

Clean Line Energy Partners would review the Public Service Commission order carefully to determine possible options for the future of the project.

"We feel like the project is too important to the state of Missouri to not pursue a way forward," Lawlor said.

Wind on the Wires — a St. Paul, Minn.-based nonprofit organization of groups related to the wind energy industry — saw considerable potential for the project as well.

"The PSC's decision today is a huge missed opportunity to provide low-cost clean energy to the Heartland and to create the jobs and economic development that comes along with wind development and transmission projects like the Grain Belt Express, Wind on the Wires Executive Director Beth Soholt," said.

But opposition groups were encouraged by the Wednesday decision, including Block Grain Belt Express — a group of Missouri farmers, landowners and residents who oppose the project.

"The commissioners apparently believed that the proposed line is not needed by the citizens of Missouri," Block Grain Belt Express Vice President Jennifer Gatrel said. "Grain Belt does have additional options it might pursue. We, however, are confident that we can succeed in preserving what appears to be today's decision at the Public Service Commission."

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November 23, 2015

EXHIBIT 4

GOVERNMENT & POLITICS JULY 1, 2015

Missouri rejects 'Grain Belt Express' plan for wind power



1 of 12



BY DONALD BRADLEY
dbradley@kcstar.com

<http://www.kansascity.com/news/government-politics/article26031445.html>

November 23, 2015

The Missouri Public Service Commission voted Wednesday to deny a Texas company's plan for a controversial \$2.2 billion, 780-mile transmission line to carry wind power from the Kansas high plains across Missouri to eastern power grids.

Backers, including environmentalists, had pushed the first-of-its kind project as a major step in the fight for renewable energy against coal-fired power plants. The "Grain Belt Express" was also touted as a way to create jobs and provide low-cost electricity to consumers, including 200,000 homes in Missouri.

But while U.S. energy policy calls for increased wind power, it doesn't include a federal right of way to get those power lines past Missouri farmers who didn't want it coming across their land.

They dug in their boots, planted signs, organized and packed hearings around the state.

The PSC voted 3-2 Wednesday to deny Houston-based Clean Line Energy's application, saying the project was not needed. The accompanying order noted farmers' concerns about crops, pastures and maneuvering large equipment around towers.

Evidence showed, the order said, that "actual benefits to the general public from the Project are outweighed by the burdens on affected landowners."

Clean Line Energy said Wednesday it's fight for the power route is not over.

A week before the vote, Loren Sprouse — along with two brothers, he farms land in Caldwell County that's been in the family since 1919 — said of Grain Belt: "This is a giant land grab by a huge company. They (Clean Line) are a private, for-profit company trying to masquerade as a public utility."

After Wednesday's vote, Sprouse said: "Now we can get back to the important business of feeding America."

The PSC vote clearly disappointed, and frustrated, Clean Line officials, who only last week announced a Kansas City company would build Grain Belt.

"The commissioners were confused about the benefits to the state of Missouri," Mark Lawlor, the project's development director, said after the vote.

Company officials had pushed the 1,300 construction jobs. They said Grain Belt would have brought low-cost renewable energy to the state and generated an additional \$6.4 million in property taxes for the eight Missouri counties it intended to cross. That would be

money for schools, roads, hospitals and emergency services.

The company still has options to save the project. It could go to court or even seek federal intervention with the U.S. Department of Energy.

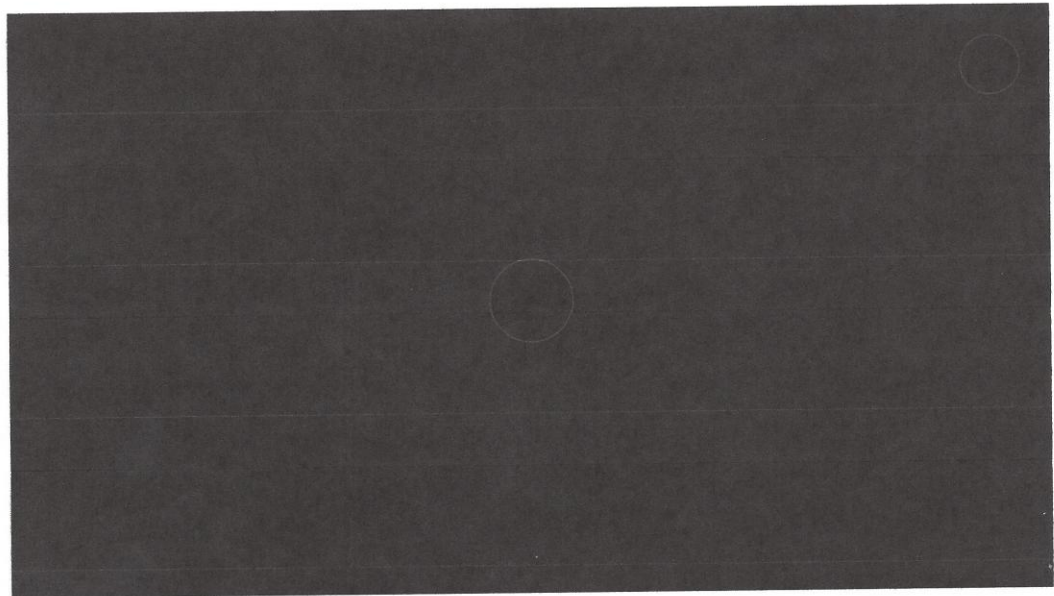
Lawlor said the company was not ready to walk away.

The Grain Belt fight had shaped up to be an urban-rural conflict. But it also pit the future against the past.

Clean Line uses the latest energy technology and was backed by chambers of commerce, labor unions and national environmental groups, such as the Sierra Club. They pushed the future of renewable energy, cleaner air, better health, jobs and tax dollars.

The farmers talked about what 150-foot towers strung with high-voltage cable on 200-foot easements would look like coming across their fields and pastures. Some said it would ruin the land for the next generation.

Also, the fact that the proposed route avoided cities and towns made farmers feel like they were viewed as easy pickings.



Landowner Loren Sprouse opposes high-voltage Grain Belt Express power line

"They (Clean Line) act like they can do whatever they want and that don't sit well with a lot of us up here," Logan Kelly, who with his brother recently bought a piece of the old family place near Braymer in Caldwell County, said a week ago.

"They tell us what a great deal we're getting," he said. "But you take a pencil to it, and there's nothing good about it."

The opponents were quick to say they have nothing against wind energy, but if folks back east want it they can make their own.

That's where the maps with the purple blotches came in.

Maps charting annual wind speed show it blows hardest and more often along a strip from the Dakotas south to Texas. A big purple blotch, noting high wind, covers southwestern Kansas, an area dubbed "the Saudi Arabia of wind."

So that's where companies like Clean Line have gone. Grain Belt is only one of the company's routes. If the country is to reach its goal of 20 percent wind power by 2030, Kansas wind must be exported, Lawlor argued.

For more than two years, Clean Line employees had driven blacktops and gravel roads trying to reach easement agreements with farmers. But of 500 or so tracts of land between Buchanan County on the west and Ralls County on the east, the company came to terms with fewer than 50 owners.

Lawlor had likened the conflict to the 1930s, when electric power came to rural America and many farmers didn't want the intrusion.

"We will always have opposition," Lawlor said before Wednesday's vote. "But people opposed to this now turned on their lights this morning and that power came across somebody's land."

The transmission line would have required an easement 150 to 200 feet wide. Clean Line offered to pay 100 percent market value per acre even though farmers could continue to use the land for crops and cattle.

Depending on what style of tower, the company offered annual payments of \$500 to \$1,500 or one-time payments of \$6,000 to \$18,000.

Opponents wanted no part of it. They argued that wind farms could be built off the Atlantic coast to serve the East, an idea deemed doable by experts, if not for the exorbitant cost. Opponents also thought the lines could be buried, though industry experts say that's not practical for such high voltage.

And some opponents simply distrusted big business. Clean Line is backed by National Grid, based in Great Britain and one of the largest international energy companies in the world.

Jennifer Gatrel, a leader of the grassroots opposition group Block Grain Belt Express Missouri, described the victory as democracy in action.

"You can stand up to corporate interests and protect your property rights," she said.

John Hickey, head of the Sierra Club in Missouri, said there are too many power lines in the state, but he was a big supporter of Grain Belt Express.

The country needs low-cost wind from Kansas, Hickey said, and projects like Grain Belt would eventually rid the country of dirty emissions from coal-fired electricity.

Of course transmission lines can be disruptive, he added.

"But you have to look at the impact on public health and air quality," Hickey said.

"Having electricity has its price."

To reach Donald Bradley, call 816-234-4182 or send email to dbradley@kcstar.com.

WHAT'S NEXT

Clean Line Energy said after Wednesday's decision that its efforts to build the transmission line were not over.

The company could go to court or even seek federal intervention with the U.S. Department of Energy.

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