

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

Case No. EA-2016-0358

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**RENEW MISSOURI'S REMAND REPLY BRIEF**

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COMES NOW Renew Missouri Advocates (“Renew Missouri”) and offers the following  
*Remand Reply Brief*:

**Introduction**

1. The Public Service Commission (“Commission”) has authority to issue a Certificate of Convenience and Necessity (“CCN”), the Grain Belt Express Clean Line LLC (“Grain Belt”) meets the Commission’s *Tartan* criteria, and doing so advances the public interest. Opponents of the project continue to find new reasons the application should be denied; now they object to (1) Grain Belt’s purported failure to meet the *Tartan* criteria and (2) an alleged lack of Commission authority to issue a CCN to Grain Belt.<sup>1</sup> Having addressed the *Tartan* criteria in its initial *Remand Brief*, Renew Missouri replies to the opponents’ argument against the Commission’s authority.

**The Commission’s CCN authority**

2. In their initial brief, The Missouri Landowners Alliance, Show Me Concerned Landowners, Charles and Robyn Henke, R. Kenneth Hutchinson, Randall and Roseanne Meyer, and Matthew and Christina Reichert (hereinafter collectively referred to as “MLA”) assert that Grain Belt is not an “‘electrical corporation’ as defined in Section 386.020(15) RSMo, and

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<sup>1</sup> Missouri Landowners Alliance Br. p. 3, 14.

therefore may not be issued a CCN as an ‘electrical corporation’ under Section 393.170.”<sup>2</sup> The *crux* of MLA’s argument is that Grain Belt is not dedicated to the “public use” because it is “not selling any service to retail customers” discussing *State ex rel. M. O. Danciger & Co. v. Pub. Serv. Comm’n of Mo.*, 205 S.W. 36 (Mo. 1918).<sup>3</sup> MLA’s reasoning, as applied to Grain Belt’s application is in error.

3. First, the Missouri Supreme Court has already determined the Commission can grant Grain Belt a CCN. Section 393.170.1 RSMo. provides: “[n]o ... electrical corporation ... shall begin construction of a ... electric plant ... other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission.” An “electrical corporation” includes “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever ...owning, operating, controlling or managing any electric plant.”<sup>4</sup>

“Electric plant” means:

... all real estate, fixtures and personal property operated, controlled, owned, 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; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power[.]<sup>5</sup>

In its order preceding the instant case, the Court issued a unanimous opinion reversing the Commission’s prior order denying Grain Belt a line CCN and remanding the case for the

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<sup>2</sup> MLA Br. p. 3.

<sup>3</sup> MLA Br. pp. 4, 7-8.

<sup>4</sup> Except “a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others[.]” Section 383.020 (15) RSMo.

<sup>5</sup> Section 386.020 (14) RSMo.

Commission to determine whether Grain Belt’s proposed project is necessary or convenient for the public service.<sup>6</sup> This was not an order talking about a similar yet distinguishable applicant; this order concerned Grain Belt itself and its current proposal. Thus, if the Commission determines that Grain Belt’s proposal is “necessary or convenient for the public service” it can grant a CCN. The evidence presented on remand shows that this transmission line project is a major infrastructure expansion that will bring economic, market, policy, and environmental benefits to Missouri and the surrounding region.<sup>7</sup> Furthermore, by installing a converter station in Missouri, the project will allow electric purchasers to access some of the lowest cost energy in the country.<sup>8</sup> These considerations continue to support a finding that the project is “necessary or convenient for the public service” and that Grain Belt should be granted a CCN under Section 393.170.1 RSMo.

4. Second, MLA’s contention that Grain Belt is not eligible for a CCN because it is not going to offer retail service is inapt. In its order, the Court specifically noted that Grain Belt was proposing “construction of an interstate electrical transmission line” that would “cross 206 miles through eight Missouri counties[.]”<sup>9</sup> The Court went on to discuss two different kinds of certificates – “line” and “area” – and recognized that “there is a difference between the Commission’s grant of authority to construct utility lines and the Commission’s grant of authority to service a territory[.]”<sup>10</sup> Grain Belt is seeking “line” authority from the Commission, not permission to provide retail service to a territory. Furthermore, because this project is an interstate transmission line, it will not be rate regulated by the Commission but rather by the Federal Energy Regulatory Commission (“FERC”).<sup>11</sup> However, relevant to the “line” CCN sought here, FERC

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<sup>6</sup> *Grain Belt Express Clean Line, LLC v. PSC*, No. SC 96993 (Mo. banc 2018).

<sup>7</sup> Ex. 142, p. 1.

<sup>8</sup> *Id* at 2.

<sup>9</sup> *Id* at 1.

<sup>10</sup> *Id* at 7.

<sup>11</sup> 16 U.S.C. §824(a)(1); MLA Br. p. 4; Grain Belt Br. p. 9.

does not claim siting authority. This Commission has previously determined that, despite FERC's authority on rates, the Commission retains authority to require an electric transmission company to obtain a CCN before beginning construction in Missouri.<sup>12</sup> The Supreme Court's discussion of "line" and "area" CCNs supports the Commission's prior determination that it retains the ability to issue CCNs to electric transmission companies not offering retail sales to customers in Missouri.

5. Third, the Commission has issued CCNs to electric transmission companies in the recent past and has repeatedly asserted its authority to do so. For example, in File No. EA-2015-0145, the Commission granted a CCN to Ameren Transmission Company of Illinois ("ATXI") to "build a 345,000 volt transmission line about seven miles long that runs from Palmyra, Missouri and across the Mississippi River to the Missouri state line" despite the fact ATXI would not be selling electricity at a retail rate to the public.<sup>13</sup> In File No. EA-2019-0112, the Commission granted a CCN to GridLiance High Plains LLC, f/k/a South Central MCH LLC ("GridLiance") to "construct, own, install, and maintain certain Southwest Power Pool ("SPP") mandated network upgrades to 1.25 miles of a 69kV electric transmission line location in Christian County, Missouri."<sup>14</sup> GridLiance had no retail customers. In EA-2016-0188, the Commission granted Transource Missouri, LLC ("Transource Missouri") a CCN authorizing it to "own, operate, and maintain a 345 kV Interconnection Switch Station in Holt County, Missouri ("Switch Station") that will connect the Rock Creek Wind Project with Transource Missouri's Sibley-Nebraska City 345 kV

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<sup>12</sup> *In the Matter of the Application of Ameren Transmission Company of Illinois for Other Relief or, in the Alternative, a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage a 345,000-volt Electric Transmission Line in Marion County, Missouri, and an Associated Switching Station Near Palmyra, Missouri*, File No. EA-2015-0145, Revised Order Granting Certificate of Convenience and Necessity, p. 6, citing *Piedmont Envtl. Council v. F.E.R.C.*, 558 F. 3d 304, 310 (4th Cir. 2009).

<sup>13</sup> *Id.*

<sup>14</sup> *In the Matter of the Application of GridLiance High Plains LLC for a Certificate of Convenience and Necessity to Construct, Own, Install, and Maintain Certain Southwest Power Pool, Inc.-Mandated Network Upgrades to a 69kV Electric Transmission Line Located in Christian and Greene Counties, Missouri*, File No. EA-2019-0112, Order Granting Certificate of Convenience and Necessity.

electric transmission line project.”<sup>15</sup> Transource had no retail customers. Applying this past Commission practice to Grain Belt’s present application, the fact that it will not have retail customers does not preclude its status as a public utility or the Commission’s authority to issue a CCN to construct the transmission line or the converter station.

**Conclusion**

6. According to plain language of the enabling statutes, direction from the Missouri Supreme Court, and past Commission practice, it is clear that the Commission may lawfully issue a CCN to Grain Belt.<sup>16</sup> The Commission should grant the requested CCN so that Missouri can benefit from the low-cost wind energy that the high-voltage, direct current interstate electric transmission line and associated AC interconnecting facilities will bring.

WHEREFORE, Renew Missouri submits its *Remand Reply Brief*.

Respectfully Submitted,

**/s/ Tim Opitz**

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 16<sup>th</sup> day of January 2019:

**/s/ Tim Opitz**

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<sup>15</sup> *In the Matter of the Application of Transource Missouri, LLC for a Certificate of Convenience and Necessity Authorizing it to Own, Operate, and Maintain a Switchyard Necessary for the Interconnection of the Rock Creek Wind Project with the Sibley-Nebraska City Electric Transmission Project*, File No. EA-2016-0188, Order Granting Certificate Of Convenience And Necessity.

<sup>16</sup> Section 393.170 RSMo; Grain Belt Express Clean Line, LLC v. PSC, No. SC 96993 (Mo. banc 2018).