

**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 ) Case No. EA-2014-0207  
Current Transmission Line and an Associated Converter )  
Station Providing an interconnection on the Maywood- )  
Montgomery 345 kV Transmission Line )

**REPLY BRIEF OF**  
**THE SHOW ME CONCERNED LANDOWNERS**

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**REPLY BRIEF**  
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## **I. INTRODUCTION**

This brief will address the same issues addressed in Show Me’s initial brief. These issues, as identified in the list of issues, are:

1. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt Express Clean Line LLC (“Grain Belt Express”) is seeking a certificate of convenience and necessity (“CCN”) are necessary or convenient for the public service?

- a. There must be a need for the service;
- b. The applicant’s proposal must be economically feasible;
- c. The service must promote the public interest;
- d. Other considerations.

2. If the Commission grants the CCN, what conditions if any, should the Commission impose?

## **II. THERE IS NO NEED FOR THE SERVICE**

On page 2 of its Initial Brief, Grain Belt Express makes its main assertion about why it thinks its project is needed:

“There is ‘no viable alternative other than new transmission [from Grain Belt Express] for delivering the high-quality wind resources in areas to the west of Missouri to Missouri and other points eastward.’” (Grain Belt Express Initial Brief at 2, citing Ex.701 at 8 (Goggin Surrebuttal)).

Then, on page 16 of its Initial Brief, Grain Belt Express asserts that it is the only viable option: “Mr. Goggin concluded that the development of wind generation in northwest in MISO

or other areas “is not a viable alternative to the construction of” the Grain Belt Express Project.” (Grain Belt Express Initial Brief at 16, citing Tr. 946-47).

Also on page 16 of its Initial Brief, Grain Belt Express cites the testimony of Mr. Langley from Infinity Wind. Mr. Langley described Infinity Wind’s plans to develop wind power to meet the need for low-cost, wind generation in Missouri and other states. Tr. 883-84, 887-88. Mr. Langley then concludes: “However, Infinity Wind would be unlikely to carry out its plans as currently designed if the Grain Belt Express Project were not approved by this Commission because of the current inadequate state of transmission infrastructure and the risk of significant curtailments.” (Grain Belt Express Initial Brief at 16, citing Tr. 895-98).

In sum, in its initial brief Grain Belt Express offers two witnesses to support its assertion that its project is the only viable option to provide wind sources to MISO and PJM:

- Michael Goggin
- Matt Langley

Michael Goggin is the director of Research for the American Wind Energy Association (“AWEA”). (Goggin Rebuttal, Exhibit 700, p.11.) He testified on behalf of Wind on the Wires and the Wind Coalition. *Id.*

As noted above, in this case Mr. Goggin testified that the development of Wind in MISO is not a viable alternative to the construction of the Grain Belt Express Project. But he has told a different story under oath in a case in another jurisdiction.

In Illinois Commerce Commission (ICC) Docket No. 12-0598, Mr. Goggin testified that “Illinois and the parts of MISO to the west of Illinois have some of the best wind energy resources in the United States.” (Tr. at 962-963). Mr. Goggin continued to testify that “North Dakota, South Dakota, Minnesota, Missouri and Iowa, combined, have a wind energy potential

of 2,838,999 megawatts, around 34 percent of the total on share potential in the lower 48 U.S. states, or enough to meet the current electricity needs at least two times over.” (Tr. at 963).

Mr. Goggin also spoke glowingly of the MISO MVP transmission planning process, which MISO developed to deliver low-cost wind power from remote renewable energy generators to load center in the MISO footprint: “This is not surprising as the Illinois Rivers Project was designed by MISO as part of a portfolio to satisfy state RPS requirements at the lowest cost for consumers. As the MISO MVP report explains, ‘The goal of the RGOS [Regional Generation Outlet Study] was to design transmission portfolios that would enable RPS mandates to be met at the lowest deliverable wholesale energy cost.’” (Tr. at 965). Mr. Goggin’s testimony in the Illinois case directly contradicts his testimony in this case. Mr. Goggin’s job is to support wind projects. His testimony on “need” should be given no weight.

Mr. Langley works as Director of Business Development for Infinity Wind Power (Infinity). (Langley Rebuttal, Exhibit 875, p. 1). Infinity responded to Grain Belt Express’ RFI and wants to be a part of the Grain Belt Express project. His company is one of the companies that could potentially benefit financially if the Grain Belt project is ever completed. (*Id.* at p. 5).

Of course Infinity favors the Grain Belt Express project. It expects to benefit financially if the project gets built. Infinity might “need” this project, but the Commission should give his testimony no weight on the subject of need for Missouri, MISO, and PJM, because it is self-interested and biased.

Furthermore, it is important to note what Grain Belt Express did not provide for this Commission’s review. Grain Belt did not provide any witnesses from SPP, MISO and PJM to testify about their transmission planning programs and their plans to provide access to renewable energy. Their plans may or may not be robust. But the record is void of any credible evidence

that the RTO's transmission planning processes cannot provide access to adequate renewable energy.

Finally, Grain Belt Express ignored a very important stakeholder – customers. They brought forth no customers clamoring for renewable energy that only Grain Belt Express can provide. The only “evidence” offered by Grain Belt Express from a potential customer in Missouri is a resolution that the City of Columbia, Missouri issued expressing the city council's support for its project “as an economically feasible renewable energy option . . .” (Exhibit 120, p. 16 and Schedule DAB-8). Grain Belt Express claims that Columbia Water and Light, the municipal utility of Columbia, recommended approval of the resolution. (Exhibit 120, p. 16). Upon further inspection, however, Grain Belt Express' claim is not quite true. A review of the actual language of the resolution shows that the City of Columbia Water and Light Advisory Board, not the utility, made the recommendation. (Exhibit 120, Schedule DAB-8, p. 1). Members to the advisory board are appointed by the city council (City of Columbia Ordinance No. 14362). “The powers of the board shall be solely advisory.” (*Id.*). The advisory board members are political appointees, not utility professionals. The advisory board does not supervise the utility in any way. Grain Belt Express has nothing from the utility professionals who know what Columbia's power needs are. This resolution is nothing more than a political document. Grain Belt Express has shown that it is very adept at courting political officials.

Grain Belt Express told one side of the story – its own. But it has the burden to prove the service is needed. It did not provide enough to meet that burden, and its application should be denied.

### **III. THE APPLICANT'S PROPOSAL IS NOT ECONOMICALLY FEASIBLE**

On page 20 of its Initial Brief, Grain Belt Express seeks to minimize the vast education, experience, knowledge, and accomplishments of Show Me witness Dr. Michael Proctor. This is because Grain Belt Express' witness, Mr. Berry, does not compare favorably to Dr. Proctor. While Dr. Proctor has a Ph.D. in Economics, (Proctor Rebuttal, Exhibit 400), Mr. Berry has a Bachelor of Arts degree (Berry Direct, Exhibit 118, p.1). He testifies to working for only two employers – Clean Line Energy Partners LLC (the parent company of Grain Belt Express) and Horizon Wind Energy. (*Id.* at 1-2). None of his testimony mentions that Mr. Berry has ever worked for an RTO, or a company that already owns transmission assets. Mr. Berry's testimony does not provide any information that any of his business models have ever been successful.

Again, on page 20 of its initial brief, Grain Belt Express criticized Dr. Proctor for assuming an increase in the capital cost of the project from Grain Belt Express' original estimates. Projects frequently come in over budget, sometimes significantly. Staff witness Dan Beck said it thusly:

- A. I will kind of hearken back to my early IRP days. One of the phrases that was used was planning is everything. Plans are useless. The idea is you do studies, you make plans, and then reality kind of hits and you deal with that.

(Tr., p. 1748). We have already seen the cost of the project increase by \$500 million. Grain Belt Express' failure to account for almost inevitable cost overruns is fatal to their assumptions about what their project will cost consumers.

Running financial models is one thing – having the experience of successfully implementing those plans are another. Grain Belt Express criticizes Dr. Proctor for having no experience with the Grain Belt model. The fact is, NO ONE has experience with the Grain Belt model – including Grain Belt Express. That is because this project is the first of its kind.

Missouri should not be the guinea pig in an experiment of an untested, unproven business model. Too many Missourians will be damaged if it fails.

#### **IV. THE SERVICE DOES NOT PROMOTE THE PUBLIC INTEREST**

On page 28 of its Initial Brief, Grain Belt Express asserts that its facilities will provide benefits to customers in Missouri, MISO and PJM. They say this because the models they created say so. However, as pointed out in Show Me's initial brief, these benefits to Missouri and MISO are illusionary because of faulty assumptions. That is exactly why Staff, in its initial brief, proposed that Grain Belt Express perform additional studies, designed after Staff and other parties have had the opportunity to provide meaningful input regarding the quality of the data and reasonableness of the inputs. Specifically, staff recommended the following:

12. That Grain Belt Express perform the following studies, designed after Staff and other parties have had the opportunity to provide meaningful input regarding the quality of the data and the reasonableness of the inputs used for (1) load assumptions for the year 2019, (2) generator capacities, efficiencies, dispatch stack, or bid amounts for the year 2019, (3) the wind delivery used for the year 2019, (4) the level of precision used in modeling factors such as generator heat rate curve, transmission loading curves, or other inputs to the PROMOD model used for the studies, and provide them to the Commission for it to determine whether they show the transmission line and converter station in Missouri is needed, economically feasible and/or promotes the public interest in Missouri:

a. Production modeling that incorporates:

- day-ahead market prices to serve load;
- real-time market prices to serve load;
- ancillary services prices to serve load;
- day ahead market prices realized by Missouri-owned or located generation;
- real-time market prices realized by Missouri-owned or located generation;
- ancillary services prices realized by Missouri-owned or located generation;
- and
- an estimate of the impact of Grain Belt Express' transmission project on the operational efficiency of Missouri-owned or located generation.

b. Production, transmission, and economic modeling or analysis to determine:



- the cost of transmission upgrades that may be economical to resolve the transmission constraints that its energy injections will cause or exacerbate;
- the impact of using the entire design capacity of the Missouri converter station;
- the net impact to Missouri utilities of picking up Missouri energy by day for export to PJM or SPP; and
- whether the variability of the injected wind could be better managed in the SPP prior to injection.

(Staff Initial Brief, p. 9-10). Show Me submits that these types of market modeling studies should have been completed by Grain Belt Express before it submitted its Application. At any rate, these studies need to be designed and completed, with stakeholder input all along the way, just as Staff has recommended.

On pages 29-31 of its Initial Brief, Grain Belt Express discusses how it will create economic development in Missouri. Missouri Landowners Alliance's (MLA) initial brief does an excellent job of showing how Grain Belt's studies ignore the negative economic impacts of the project. (See, MLA Initial Brief, pp. 30-37). As MLA points out in its initial brief, Grain Belt Express made no attempt to identify the potential negative economic inputs on the line, and simply ignored them (*Id.* at 33). Grain Belt could have performed a more comprehensive study, but chose instead to present a one-sided study favorable to it. Such a one-sided study is not in the public interest.

Further, as Show Me pointed out in its initial brief, this type of economic development is beyond the scope of this Commission's analysis and consideration for a CCN. (See, Show Me Initial Brief, pp. 6-7), and the Commission should give this evidence no weight whatsoever.

## V. OTHER CONSIDERATIONS

On pages 53-54 of its Initial Brief, Grain Belt argues that it does not need permission of the state counties as required by Section 393.170 because it is seeking a "line" certificate rather than an "area" certificate. This is a novel interpretation. Grain Belt Express cites *StopAquila.org v.*

*Aquila*, 180 S.W. 3d 34 (Mo. App. W.D. 2005) as support. In that case, the company sought to construct and operate an electrical power plant and transmission substation in agricultural district located in unincorporated Cass County. The company claimed that the trial court erred in granting the injunction because (1) the company was exempt from county zoning regulation because the legislature had given exclusive regulatory authority over public utilities to the Public Service Commission (PSC), (2) the company was exempt under Section 64.235 from the zoning county authority because it had obtained PSC approval to build the plants, and (3) the construction had previously been authorized under Section 393.170.1. The appellate court affirmed the permanent injunction and held: (1) while the PSC did have exclusive authority to regulate utilities, it was given no zoning authority, (2) Section 64.235 did not exempt the company from county zoning authority as the company did not first obtain permission from the county commission, and (3) Section 393.170 did not allow the company to rely on approval from the PSC that had been given to its predecessor to erect light poles in 1917.

*StopAquila.Org* was a case involving county zoning, and does not control here.

However, Grain Belt Express cites *StopAquila.org* for the premise that “The necessity of a municipal franchise only applies to the grant of an ‘area’ CCN under 393.170.2.” (Grain Belt Express Initial Brief, p. 53). This *StopAquila.org* simply does not say or imply.

Grain Belt Express also cites *State Ex Rel. Harline v. PSC*, 343 S.W. 2d 177 (Mo. App. W.D. 1960). In that case, the landowners alleged that the electric company, which supplied electric current to consumers, was preparing to locate and operate an electrical transmission line and to interconnect it with the lines of another utility company, in addition to its plans to acquire easements on the landowners’ property. The electric company claimed authority for its acts under the Commission’s order entered in another case, granting a certificate of convenience and

necessity to a predecessor company and also the Commission's order in a second case, approving the transfer of corporate rights from the predecessor company to the electric company. The court rejected the landowners' principal contention that the previously issued certificate of convenience and necessity conferred no authority upon the electric company to construct the planned transmission line. The electric company was not required Section 393.170 to obtain an additional certificate of convenience and necessity from the Commission to construct an extension to its existing transmission lines and facilities within a territory that was already allocated to it under a determination of public convenience and necessity.

*Harline* does not discuss the differences between a "line" certificate and an "area" certificate, and nothing in Section 393.170.2 states that an entity seeking a line certificate does not need the required consent of the proper municipal authorities. Section 393.170.2 is very clear that an entity seeking a CCN shall have filed verification that it has received the required consent of the proper municipal authorities before a CCN shall be issued. Grain Belt Express admits that it does not have all of the required approvals from the affected counties. Grain Belt Express' application should be denied.

## **VI. CONDITIONS**

As Show Me stated in its initial brief, Grain Belt Express has not met its burden to obtain a CCN, and this Commission should deny its Application. However, if the Commission were to grant the application, the evidence shows that the Commission should impose numerous conditions.

On page 54 of its initial brief Grain Belt Express states, "Grain Belt Express has agreed to a multitude of conditions." (Grain Belt Express Initial Brief, p. 54). While it has agreed to some conditions, "multitude" is an exaggeration. In fact, in its initial brief, Staff lays out 23

recommendations, some with multiple subparts. And, as far as Show Me can tell, Grain Belt does not agree with any of the conditions relating to routing, construction and land issues – none.

A. For example, on page 51 of its initial brief, Grain Belt Express objects to Staff construction and clearing conditions 6 and 7. Grain Belt Express says it “prefers to follow a policy that would require it to coordinate with landowners, restoration specialists, state and federal agencies, professional arborists, and environmental groups on the appropriate restoration practices, as particular issues are encountered on specific areas of real estate.” (emphasis added). Show Me has a novel idea: How about giving the landowner the authority to determine how that landowner’s own land is restored? In reality, Grain Belt Express wants to stack the deck by having a committee friendly to it making the decision. Grain Belt Express’ disdain for landowners is palpable.

This shows that Grain Belt Express has no interest in working with landowners once it has the power of eminent domain and condemnation over them. This is of great concern to Show Me.

While Show Me endorses all of Staff’s conditions as contained in Staff’s initial brief, it especially endorses the conditions regarding land, which are 1, 2, 3, 4 (including a through y), 9, 10, 11 (including a through d), 22, and 23.

### **CONCLUSION**

Grain Belt Express has not shown that it is entitled to receive a CCN to construct and operate its proposed project. It has not shown need or economic feasibility. It has not shown that it is willing to work with landowners on a fair and equal basis. Granting eminent domain to such an entity could cause irreparable damage to a large swath of Northern Missouri. This Commission should deny the application outright. If the Commission does grant a CCN, it

should impose all the conditions proposed by Staff. The Commission should prohibit eminent domain, with a clause that provides should a court rule that the Commission cannot prohibit eminent domain, the CCN is void. In the alternative, Show Me endorses Staff's conditions on eminent domain.

WHEREFORE, Show Me respectfully offers its Reply Brief and prays that the Commission conform its decision in this case to the arguments contained herein.

Respectfully submitted,

HEALY & HEALY,  
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#### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 22<sup>nd</sup> day of December, 2014.



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Terry M. Jarrett