

**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 ) Case No. EA-2016-0358  
Voltage, Direct Current Transmission Line )  
and an Associated Converter Station )  
Providing an Interconnection on the )  
Maywood-Montgomery 345 kV )  
Transmission Line. )

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION'S  
REPLY BRIEF ON REMAND**

The Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) supports Grain Belt Express Clean Line, LLC’s (“Grain Belt”) application for a Certificate of Convenience and Necessity (“CCN”), as does MJMEUC’s members, which at a minimum include the thirty-five MoPEP cities<sup>1</sup>, Centralia, Columbia, Kirkwood, and Hannibal (and their hundreds of thousands of citizens). MJMEUC and its members have decided they need the Grain Belt project as it is in the best interest of their very large public. No parties in their initial post-hearing briefs on remand challenged the massive benefit received by the public. This brief will address issues raised by the Missouri Landowner’s Alliance (“MLA”)<sup>2</sup> and the Missouri Farm Bureau.

**I. Grain Belt is an Electrical Corporation.**

As to the issue regarding whether Grain Belt is an electrical corporation, MJMEUC agrees with the argument presented by Staff in their initial post-hearing brief on remand. The facts clearly show that Grain Belt is an electrical corporation, and that the Commission has

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<sup>1</sup> Exhibit 475, Schedule DK-1: Albany, Ava, Bethany, Butler, Carrollton, Chillicothe, El Dorado Springs, Farmington, Fayette, Fredericktown, Gallatin, Harrisonville, Hermann, Higginsville, Jackson, Lamar, La Plata, Lebanon, Macon, Marshall, Memphis, Monroe City, Odessa, Palmyra, Rock Port, Rolla, Salisbury, Shelbina, St. James, Stanberry, Thayer, Trenton, Unionville, Vandalia and Waynesville.

<sup>2</sup> The MLA brief also includes the arguments of Show-Me Concerned Landowners, Charles and Robyn Henke, R. Kenneth Hutchinson, Randall and Roseanne Meyer, and Matthew and Christina Reichert, which will be collectively referred to as “MLA” in this brief.

previously found that its facilities will be dedicated to the public use.<sup>3</sup> While MLA spends much time discussing the fact that the Federal Energy Regulatory Commission (“FERC”) has issued an order allowing Grain Belt to negotiate rates<sup>4</sup>, the argument that MLA makes is flawed.

First, retail customers do not directly take wholesale electrical service; there is a reason for the distinction between those types of services, as one is regulated by the Commission under a set of state laws, and the other by the FERC pursuant to the Federal Power Act. However, this split in jurisdiction has not prevented the Commission from issuing CCN’s to wholesale electrical corporations who built transmission lines within Missouri. As contemplated by Missouri statutes and law, more is to be considered than the rate at which service is to be offered when considering a CCN application.

Second, FERC has authorized the selling of the transportation product offered by Grain Belt at different prices to different customers. Attempting to indirectly attack the FERC order is not only an improper collateral attack on an administrative order, it is an attack that violates the filed rate doctrine.<sup>5</sup>

MLA’s legal arguments, based upon ancient law, are not persuasive. MLA fails to note that in *Palmer v. City of Liberal*<sup>6</sup>, it was the city of Liberal who owned the electrical plant, not the plant operator (the Cardin Company), and the city was operating under municipal law similar to today’s municipal law, in that municipal utilities have the statutory right to build electrical plant.<sup>7</sup> In *State ex. Rel. Buchanan County Power Transmission*<sup>8</sup>, the service was to a single retail customer using no public right of way or right of condemnation, and did not provide any

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<sup>3</sup> See *Concurring Opinion*, 2017 Mo. PSC LEXIS 430 (Mo. P.S.C. August 16, 2017).

<sup>4</sup> *Grain Belt Express Clean Line LLC*, 147 F.E.R.C. ¶61,098 (F.E.R.C. May 8, 2014), paragraph 23.

<sup>5</sup> *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251-52, 71 S. Ct. 692, 95 L. Ed. 912 (1951).

<sup>6</sup> *Palmer v. City of Liberal*, 64 S.W.2d 265 (Mo. 1933).

<sup>7</sup> See RSMo §91; previously §7641 in 1929, as cited in *Palmer*.

<sup>8</sup> *State ex. Rel. Buchanan County Power Transmission v. Baker*, 9 S.W.2d 958 (Mo. banc 1928).

public benefit; the facts are so disparate from what is before this Commission as to be meaningless. As to *Danciger*<sup>9</sup>, MLA ignores the FERC order related to Grain Belt's service<sup>10</sup>, which in paragraph 23, makes the following finding:

We find that the proposed criteria will allow Grain Belt Express to distinguish among potential customers in a not unduly discriminatory or preferential manner...

As FERC has already ruled on this issue and found Grain Belt's service to be public, MLA cannot now be allowed to question that issue here.

Furthermore, while MLA cites to RSMo §393.130.2 for the proposition that Grain Belt should not be allowed to negotiate its rate in spite of its FERC authorization, MJMEUC would urge the Commission to consider the second sentence of RSMo §393.130.1, which states as follows:

All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and **not more than allowed by law** or by order or decision of the commission (*emphasis added*).

The FERC order authorizing Grain Belt to negotiate its rate with potential customers is a federal tariff, and as such should be treated as a federal regulation.<sup>11</sup> This allows Grain Belt to operate as an electrical corporation within Missouri law, as the statute expressly contemplates a rate other than one authorized by the Commission.

## **II. Other Jurisdictional Issues are not Relevant.**

While speculating as to the actions of both Illinois and Kansas regulators can provide spirited debate, the only decision before this Commission is as to whether Grain Belt has met the

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<sup>9</sup> *State ex rel. M. O. Danciger & Co. v. Pub. Serv. Comm'n of Mo.*, 205 S.W. 36 (Mo. 1918).

<sup>10</sup> *Grain Belt Express Clean Line LLC*, 147 F.E.R.C. ¶61,098 (F.E.R.C. May 8, 2014).

<sup>11</sup> See *Central Iowa Power Coop. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 561 F.3d 904, 913 (8th Cir. 2009). In *Central Iowa* the court found that a FERC-filed transmission agreement "has the same legal force as a federal regulation."

*Tartan*<sup>12</sup> factors and should be issued a CCN for Missouri. As such, the arguments advanced by MLA as to other jurisdictions should be disregarded as not relevant to the decision before this Commission.

### **III. Interstate Commerce Does Not Abrogate Commission Jurisdiction.**

MLA argues that because FERC has the authority to set the rates for Grain Belt, that fact somehow prevents Grain Belt from having a CCN issued to it by the Commission. That argument ignores the opening sentence of *Grain Belt Express Clean Line*<sup>13</sup>, which states as follows:

Grain Belt Express Clean Line, LLC ("Grain Belt"), seeks to construct a complex, *interstate* electrical transmission line and associated facilities (*emphasis added*).

In the first fact stated by the Missouri Supreme Court, the Court found that Grain Belt is an interstate transmission line, and later held that the Commission possesses the authority to issue Grain Belt a CCN, provided that the Commission finds that the project is necessary or convenient for the public service.<sup>14</sup> This holding by the Missouri Supreme Court, in light of their recognition that Grain Belt is an interstate electrical transmission line, cannot be ignored.

### **IV. Tartan Factors.**

#### *a. Need for Service.*

While this project has been awaiting regulatory approval, there has been no pursuit of further development of the project with MJMEUC members.<sup>15</sup> This is to be expected, and the

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<sup>12</sup> *See In re Tartan Energy*, 3 Mo.P.S.C.3d 173, Case No. GA-94-127, 1994 WL 762882, 1994 Mo. PSC LEXIS 26 (September 16, 1994).

<sup>13</sup> *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469 (Mo. 2018).

<sup>14</sup> *Id.*

<sup>15</sup> Tr. 2115:15-17

evidence shows that demand for renewable energy from MJMEUC members continues to grow.<sup>16</sup>

*b. Applicant's Qualifications and Financial Ability.*

Per the Supplemental Rebuttal Staff Report<sup>17</sup>, Invenergy Transmission, LLC and its affiliates (“Invenergy”) are qualified to build and operate the facility, and have the ability to finance the project. MLA cannot dispute these points, and so attempts an examination of the development company, not the operating company which is intending to build and operate the line. Both the Membership Interest Purchase Agreement and the Development Management Agreement between Invenergy and Grain Belt are more than sufficient evidence that Invenergy is the proper entity to meet these *Tartan* factors.

*c. Economic Feasibility.*

Contrary to MLA’s argument, the Grain Belt project’s economics have never been based upon the expectation that the MJMEUC rate would be the rate for all other entities subscribing to Grain Belt. That argument fails to consider the prior testimony of David Berry, which discussed the revenue strategy of selling into the PJM Interconnection, LLC market (“PJM”), which has higher prices than the Midcontinent Independent System Operator, Inc. (“MISO”).<sup>18</sup> There has been no evidence introduced into the record that Grain Belt had hoped to achieve profitability for the project based upon their MISO interconnection, or that the majority of the transmission line’s capacity will be delivered into PJM where Grain Belt can achieve greater revenue than in MISO.

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<sup>16</sup> Tr. 2136:5-11

<sup>17</sup> See Exhibit 208, Supplemental Rebuttal Staff Report.

<sup>18</sup> Tr. 944:2 – 945:12

*d. Public Interest.*

The evidence is overwhelming that this project serves the public interest. MLA speculation as to potential ownership changes, changes in suppliers, and other possible future changes do not diminish the public interest factor squarely in favor of this project.

**V. Additional Conditions Proposed by MLA.**

MJMEUC would advise against the additional conditions proposed by MLA. A decommissioning fund, if authorized, should not start at the beginning of the project. There is no evidence as to why that would be necessary. It is not possible that Grain Belt would obtain only partial construction funding and begin construction, particularly when considering the other conditions agreed to by Grain Belt<sup>19</sup>, and if the project is completed, it is not likely that it would ever be abandoned. MLA has not been able to give a real-world example of a major transmission line being abandoned once operational, and there is no realistic hypothetical where that would occur. The most likely outcome would be that if the project is completed, somebody will be using it to transport electricity from Kansas to Missouri to Indiana far into the future.

As to the proposed Illinois condition, this appears to be a back-door argument to kill the project. Waiting for a non-appealable order from Illinois would add years to the current timeline before construction could start, and would effectively force MJMEUC and others considering Grain Belt to find alternatives for their energy needs. It is also an improper delegation of the authority of this Commission to a different state's regulatory and judicial bodies.

**VI. Missouri Farm Bureau.**

Farm Bureau's brief primarily focused on policy arguments that are beyond the parameters of this case. Farm Bureau's sole *Tartan* argument focused on whether Invenergy would complete the acquisition of Clean Line, but failed to consider the conditions agreed to

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<sup>19</sup> See Exhibit 206.

between Grain Belt and Staff. If the acquisition by Invenergy would fail for any reason, there will be no harm to Missouri landowners if the CCN has been issued by this Commission.

While Farm Bureau does state their state-wide presence, and argue that a CCN should not be used for private gain, they fail to recognize that many Farm Bureau members live in the affected MJMEUC cities and those Farm Bureau members will directly receive benefits from Grain Belt. Their communities will be using sustainable energy resources, and will also benefit from lower retail rates. As such, the 'private benefit' argument fails as to Farm Bureau.

### **Conclusion**

Neither MLA nor Farm Bureau offered any persuasive argument or law against this Commission issuing Grain Belt a CCN. On behalf of its 70 Missouri municipal members and its advisory member, Citizens Electric Corporation, and their combined 347,000 Missouri retail customers, MJMEUC respectfully requests that this Commission find that the Grain Belt project is necessary and convenient for the public service and issue to Grain Belt the requested CCN.

Respectfully Submitted,

By: /s/ Douglas L. Healy

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Missouri Joint Municipal Electric Utility Commission's Reply Brief on Remand was served by electronically filing with EFIS and emailing a copy to the following interested persons on this 16<sup>th</sup> day of January, 2019:

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