

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

**SHOW ME CONCERNED LANDOWNERS
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. Procedural History

On August 30, 2016, Grain Belt Express Clean Line LLC (“GBE”) filed an application with the Missouri Public Service Commission (“Commission”) for a certificate of convenience and necessity (“CCN”) to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County.¹

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Landowners Alliance, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners, Missouri Farm Bureau Federation, Matthew and Christina

¹ Ex. 100, Skelly Direct, p. 4.

Reichert, Randall and Roseanne Meyer, Charles and Robyn Henke, R. Kenneth Hutchinson, Rockies Express Pipeline LLC, National Resources Defense Council, Sierra Club, The Wind Coalition, Wind on the Wires, Infinity Wind Power, Earth Island Institute, Renew Missouri, Missouri Joint Municipal Electric Utility Commission, Missouri Department of Economic Development – Division of Energy, Missouri Industrial Energy Consumers, Missouri Retailers Association, Wal-Mart Stores, Inc., International Brotherhood of Electrical Workers Locals 2 and 53, Missouri AFL-CIO, and Consumers Counsel of Missouri.

Several of the intervenors stated their opposition to the GBE application. The Commission held a prehearing conference and established a procedural schedule. The Commission conducted local public hearings for members of the general public in each of the eight counties where the proposed transmission line would be located. The Commission held an evidentiary hearing on March 20 through 24, 2017. During the evidentiary hearing, the parties presented evidence relating to the following four unresolved issues previously identified by the parties: (1) Does the evidence establish that the Commission may lawfully issue to Grain Belt Express Clean Line LLC ("Grain Belt") the certificate of convenience and necessity ("CCN") it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities? (2) Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a CCN are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo.? (3) If the Commission grants the CCN, what conditions, if any, should the Commission impose? (4) If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the

reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 3.190(1), (2) and (3)(A)-(D)? After the evidentiary hearing, the Commission directed the parties to address an additional question, namely “If the Commission wanted to condition the effectiveness of the CCN on the actual construction of the proposed converter station and the actual delivery of 500MW of wind to the converter station, how would it do so?” Initial post-hearing briefs were filed on April 10, 2017, and Reply post-hearing briefs were filed on April 24, 2017. The case was deemed submitted for the Commission’s decision on that date when the Commission closed the record.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Grain Belt Express Clean Line LLC (“GBE”) is a limited liability company organized under the laws of the State of Indiana. GBE is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC, a Delaware limited liability company.²

2. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a

² Ex. 100, Skelly Direct, p. 3.

notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.³ Staff participated in this proceeding.

Description of the Project

3. The transmission line proposed to be constructed by GBE in the application is an approximately 780-mile, overhead, multi-terminal +600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities (collectively, the “Project”),⁴ extending from southwestern Kansas to a point where it would interconnect with the Sullivan 765 kV substation in southwestern Indiana near the Illinois/Indiana border.⁵

4. The Project would have three converter stations, where the Project’s direct current would be converted into alternating current for injection into existing alternating current lines, or vice versa. One converter station would be located in western Kansas, where wind generating facilities would connect to the Project via alternating current (“AC”) lines. The two other converter stations in eastern Missouri and eastern Illinois would deliver electricity to the AC grid through interconnections with transmission owners in the systems of Midcontinent Independent System Operator, Inc. (“MISO”) and PJM Interconnection, LLC (“PJM”), respectively. Each converter station will be capable of converting AC power into DC power or vice versa (that is the converters are bi-directional in nature).⁶

³ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁴ Ex. 100, Skelly Direct, p. 3.

⁵ Ex. 108, Galli Direct, pp. 4-7.

⁶ Id.

5. The Project would offer point-to-point direct current transmission service from its western converter station in Ford County, Kansas to its two points of interconnection located in Missouri and at the Illinois/Indiana border.⁷

6. In Missouri, the Project would interconnect with the Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) system along an AC transmission line connecting the Maywood 345 kV substation and the Montgomery 345 kV substation. The connection would be made via a single 345 kV circuit from the converter station to a nearby tap point along the transmission line connecting Maywood to the Montgomery 345 kV substation. This Missouri interconnection would allow the delivery of up to 500 megawatts (“MW”) of power into the MISO energy market.⁸ GBE also proposes to permit delivery of up to 500 MW of power from the MISO energy market into the PJM energy market.⁹

7. In Indiana, the Project would interconnect with the Indiana Michigan Power system, a subsidiary of American Electric Power Company, at the Sullivan substation located near the Illinois/Indiana border. This final point of interconnection would provide direct access to the 765 kV network in PJM via two 345/765 kV transformers in AEP’s Sullivan 765 kV substation. This interconnection point would enable the delivery of up to 3,500 MW of power into the PJM energy market.¹⁰

8. The typical designs for lattice towers and tubular steel monopoles allow for up to 1,500-foot spans for lattice towers and up to 1,200-foot spans for tubular steel monopoles or self-supporting lattice mast structures. Given conditions that allow for such

⁷ Id.

⁸ Id.

⁹ Ex. 100, Skelly Direct, p. 8.

¹⁰ Ex. Galli Direct, pp. 4-7.

spans, there would typically be four lattice structures per mile or five tubular steel monopoles or self-supporting lattice masts per mile. However, the number of structures per mile may be higher in certain areas where shorter spans are necessary based on terrain and engineering constraints. On occasion, longer spans may be required. These longer spans typically are used for conditions such as river crossings and situations where sensitive areas such as wetlands must be avoided or where topography allows for them. Longer spans typically require taller and more robust structures than are needed for the 1,200-foot or 1,500-foot spans.¹¹

9. GBE and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) have entered into a transmission service agreement (“TSA”) after negotiations during an “open solicitation” permitted by an order of the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER14-409.

Need for the Project

10. GBE along with MJMEUC allege that the Project is necessary to fulfill the TSA between the two parties. The two parties have entered into a confidential TSA whereby GBE will provide a yet to be specified amount of transmission capacity on the Project. Subsequently, and immediately prior to the filing of rebuttal testimony in this case, MJMEUC and Infinity Wind Power, Inc. entered into a power purchase agreement (“PPA”). The PPA is also filed as Highly Confidential. The precise amount of the delivery commitment has yet to be determined.¹²

¹¹ Ex. 108, Galli Direct, pp. 11-12.

¹² Ex. 476, Grotzinger Rebuttal, p 6.

11. As GBE witness Berry testified, the terms of the TSA are a “first mover” rate and are favorable to MJMEUC.¹³ Other witnesses have testified credibly that the terms of the TSA are not likely to be sufficient as a regular rate to make the project commercially viable.¹⁴ The “normal rate” to be charged to transmission customers will be substantially higher than MJMEUC’s “first mover” rate.¹⁵

12. GBE also alleges that the Project is needed by Missouri electric utilities to meet the requirements of the Missouri Renewable Energy Standard (“RES”), for other utilities to meet the renewable energy portfolio standard requirements of other states in MISO and PJM, and for providing transmission capacity for wind generators in Kansas to reach electricity markets in MISO and PJM.¹⁶ In general, the RES is a Missouri state law requiring investor-owned electric utilities to generate or purchase electricity generated from renewable energy resources in the amount of at least 10% of its sales each calendar year beginning in 2018 and 15% of sales beginning in 2021.¹⁷

13. Three of the four investor-owned electric utilities in Missouri (The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company) have existing capacity and new contracts that are projected to not only supply enough RECs for each to meet the 15% RES requirement for 2021, but also for each to have excess RECs to sell.¹⁸ The fourth Missouri utility, Ameren Missouri, stated in its 2016 Integrated Resource Plan that it issued an RFP for wind

¹³ Ex. 104, Berry Direct, p. 7. See also Ex. 476, Grotzinger Rebuttal, p. 4 and Ex. 116, Lawlor Direct, p. 9.

¹⁴ Ex. 405, Justis Surrebuttal, pp. 9-12.

¹⁵ Tr. Vol. 15 (HC), p. 803.

¹⁶ Ex. 104, Berry Direct, p. 38.

¹⁷ Sections 393.1025(3) and 393.1030.1, RSMo Supp. 2013; Commission Rule 4 CSR 240-20.100. All statutory references are to the Missouri Revised Statutes (2000), as amended and cumulatively supplemented.

¹⁸ Ex. 201, Staff Rebuttal Report, pp. 16-17.

generation with the intention of acquiring a minimum of 50 MWs of wind generation no later than 2019. Responses were received on January 22, 2016 and are being reviewed and evaluated. Two new wind farms in Missouri have more than doubled the amount of wind capacity available in Missouri.¹⁹ Ameren Missouri can meet its 2021 RES requirements without purchasing renewable energy transported over the Project and has not indicated otherwise by intervening in this proceeding, despite being prompted to intervene by the Staff. None of the four Missouri utilities have intervened in the case or made any indication that they need the Project.

14. While the injection of wind energy via the Project would improve the reliability of the Missouri bulk electric system, the AC transmission system is not currently unreliable and Missouri utilities are not now violating any reliability standards.²⁰ In addition, it would be cheaper, take less time, provide greater availability, and be a less complex system to build a medium-size natural gas plant in Missouri to achieve better reliability benefits than the Project.²¹ As Mr. Pfeiffer testified, the reliability benefit is supplying load at time of emergency.²² A wind resource is a variable resource. The reliability benefit of a variable wind resource at time of emergency is questionable or minimal.

15. GBE did not submit the Project to the MISO regional planning process for evaluation of need and effectiveness. Since GBE elected not to participate in a planning process, the Project has not been evaluated for need and effectiveness in the MISO or PJM footprint.

¹⁹ Ex. 201, Staff Rebuttal Report, pp. 17-18.

²⁰ Tr. Vol. 14, pp. 732, 735.

²¹ Ex. 400, Justis Rebuttal, p. 10; Tr. Vol. 14, p. 732.

²² Tr. Vol. 14, p. 732.

Economic feasibility of the Project

16. The cost estimate for the Project is \$2.2 billion. Transmission upgrades in addition to the \$2.2 billion construction estimate for the Project will be necessary to connect the Project to MISO and PJM. Staff observed, “Grain Belt’s Project is still in the preliminary design stages. As discussed in the ‘RTO Interconnection Studies’ section of this Report, the RTOs stated that they had insufficient information on the Project’s design to perform final and conclusive studies. As design becomes finalized it can change the Project’s operational characteristics and the Project’s ultimate cost.”²³ While GBE has engaged Quanta as an engineering, procurement, and construction consultant, those services have not started yet. Design work is 20 to 25 percent complete.²⁴ Mr. Justis observes that the Project is likely at a class 4 stage of development as described by the American Association of Cost Estimators International (“AAACEI”) guidelines, which means that the accuracy range is -20% to +30% of the estimate.²⁵ In addition, multi-terminal HVDC projects are relatively rare. Therefore, there is little cost estimate experience on which to base GBE’s cost estimates.²⁶ Cost estimates for the line construction are uncertain and may escalate.

17. Construction of the Project could create transmission congestion in Missouri, which leads to wasted fuel and fuel expense, and also increase other costs related to wind integration and ramping capacity. The congestion issues are exacerbated by the still unresolved status of the MISO approved Mark Twain line of Ameren Missouri.²⁷

²³ Ex. 201, Staff Rebuttal Report, p. 33.

²⁴ Tr. Vol. 12, p. 548.

²⁵ Tr. Vol. 18, p. 1629;

²⁶ Ex. 201, Staff Rebuttal Report, p. 33.

²⁷ Tr. Vol. 16, p. 1315.

18. As the Commission found in Case No. EA-2014-0207, levelized cost analysis provides a way to compare investment alternatives that have differing investment costs, expenses, and asset lives. In regulated utility analysis, levelized costs represent the per-unit (in this case, per MWh) revenue requirement for supply side options, allowing a comparison of the return of and on investment as well as annual expenses over the life of alternative supply options. It is an appropriate method to use in comparing resources with differing capacities, initial investments, and operating expenses.²⁸

19. GBE witness David Berry used a levelized cost of energy (LCOE) analysis as a screening tool to determine which base-loaded resources are most economic, focusing primarily on western Kansas wind delivered through the Project.²⁹

20. Mr. Justis, testifying on behalf of Show Me Concerned Landowners, did two LCOE analyses of the Project, one independent analysis and one making adjustments to GBE Witness Berry's LCOE.³⁰

21. The two witnesses disagreed on several points in their LOCE analyses. However, there are two critical material variables in the LCOE analysis that will impact the economic feasibility of the project: (1) the capacity cost adders necessary to bring the wind authorized capacity up to a 100% compared to bring a combined cycle gas generator authorized capacity up to a 100% capacity factor and (2) the transmission rate used to make the analysis. GBE's witness Mr. Berry utilized a capacity credit that was inadequate to bring the authorized capacity up to 100%. Mr. Berry did not use the method the Commission adopted in its *Report and Order* in Case No. EA-2014-0207. Show Me's

²⁸ Ex. 400, Justis Rebuttal, p. 11.

²⁹ Ex. 104, Berry Direct, p. 27.

³⁰ Ex. 400, Justis Rebuttal, pp. 10-14.

witness Mr. Justis adjusted the wind turbine cost with an appropriate capacity cost adder similar to the method we adopted in the prior case. When the appropriate capacity cost adder is applied, combined cycle gas generation is the more economical choice.

22. In addition, GBE's witness Mr. Berry used the "first mover" transmission rate in his calculation. The GBE "normal rate" is more relevant to the Commission's determination in this case. For the Project to be feasible, the contract terms would need to support the operation and cost of the Project over the life of the Project. Since GBE's "normal rate" is significantly higher than the "first mover" rate, Mr. Berry's analysis is questionable. Mr. Justis' LCOE analysis is more reliable and shows the Project not to be economically feasible when compared to other options.

Public interest

23. At the local public hearings conducted in the eight counties through which the proposed transmission line was proposed to cross, the Commission heard testimony from many witnesses, the majority of whom opposed the Project. It was readily apparent from the testimony that the vast majority of witnesses opposing the Project were landowners on or along the proposed route. It was equally obvious that the vast majority of witnesses supporting the Project would have something to gain from the Project and did not live near the proposed route.³¹

24. Farmers on whose property the Project is proposed to be constructed could experience problems relating to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures, and problems maneuvering large equipment around towers.³² These farmers could also be hindered in developing their land in the

³¹ Transcripts, Vol. 2-9.

³² Ex. 404, Kruse Rebuttal, pp. 2-14; Ex. 403, Turner Rebuttal, pp. 3-5.

future. Problems include the possibility that the Project structures might interfere with developing new irrigation impoundments or systems or the possibility that other future structures might pose an interference with the Project.³³

25. Residential property owners also expressed concerns with the value of their land. While valuation of land is an imprecise science, the Commission is persuaded that buyers' perceptions will impact the value of land. Missouri Landowner Alliance witness Kielisch gave credible evidence that buyer perception does influence price and the ability to sell and that buyer perception is negatively impacted by the presence of a high-power transmission line.³⁴

26. A study ("REMI model") conducted by the Missouri Department of Economic Development and presented by DED witness Alan Spell alleged economic benefits from the Project to Missouri.³⁵ However, Mr. Spell admitted that the REMI model did not address the displacement of jobs and energy production in Missouri due to the Project. It also did not attempt to identify any negative economic impacts to Missouri landowners, including devaluation in land values because of the Projects presence on the land.³⁶ It is further unclear how reliable the model is since its results have never been evaluated for accuracy in any test case.³⁷

III. Conclusions of Law

GBE filed its application for a certificate of convenience and necessity. The Commission's authority to approve the Project when necessary or convenient for the

³³ Tr. Vol. 12, pp. 599-601; Tr. Vol. 18, p. 1443; Ex. 421.

³⁴ Ex. 301.

³⁵ Ex. 526.

³⁶ Ex. 526, Spell Rebuttal, p. 6.

³⁷ Tr. Vol. 16, pp. 1246, 1247, 1252, 1255.

public service, including the authority to impose reasonable conditions, is stated in Section 393.170, RSMo. In order for the Commission to approve the Project, GBE must first show that it is an “electrical corporation” and “public utility” operating, controlling or managing “electric plant”. The Commission has authority over facilities that are devoted to public use, i.e. where the company supplying electricity has professed to sell to the public indiscriminately at regular rates.³⁸ In other words, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to consumers is a “necessary and important link” in the distribution of electricity and qualifies as a public utility.³⁹

Second, GBE must show that it has all the authority to accomplish the Project it proposes. Missouri Landowners Alliance and Show Me Concerned Landowners have raised a legal issue in the briefs that questions the Commission’s statutory authority to grant a CCN in this case. Those parties point to subsection 2 of section 393.170, RSMo, which requires that “[b]efore such certificate shall be issued...a verified statement of the president and secretary of the corporation [shall be filed with the commission], showing that it has received the required consent of the proper municipal authorities”. Section 229.100, RSMo, requires assent of the county commissions before a company may erect poles for the suspension of electric light or power wires under or across the public roads or highways of that county. The two landowner parties allege that some of the required consents have been rescinded and at least one invalidated.

³⁸ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County. Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

³⁹ *The Empire District Electric Company v. Progressive Industries, Inc.*, Report and Order, 13 Mo.P.S.C. (N.S.) 659, 669 (April 2, 1968); *State ex rel. Buchanan County. Power Transmission Co. v. Baker*, 9 S.W.2d at 592.

Third and finally, GBE must show that the Project is necessary and convenient to the public service. When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost”.⁴⁰ But neither do these terms mean based on a mere desire for a more attractive price.⁴¹ The Commission finds that it is more appropriate to consider aspects of the Project related to the effect on Missouri utilities, landowners, and other future consumers rather than how it might affect Kansas wind developers or utilities and consumers from other states. This Commission exists to assure a regulated rate within a monopoly utility industry so as to avoid destructive competition. The Commission does not provide or sanction special rates to individuals or entities that desire special beneficial rates. There must be a real need for a service that cannot be provided from the existing system of monopoly services.

Since GBE brought the application, it bears the burden of proof.⁴² The burden of proof is the preponderance of the evidence standard.⁴³ In order to meet this standard, GBE must convince the Commission it is “more likely than not” that its allegations are true.⁴⁴

⁴⁰ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993). ⁸¹ “The PSC is a state agency established by the Missouri General Assembly to regulate public utilities operating within the state.” *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm’n of State*, 103 S.W.3d 753, 756 (Mo. 2003).

⁴¹ *People’s Tel. ex. v. Pub. Serv. Com. & Hanamo Tel.*, 186 S.W.2d 531, 239 Mo.App. 166 (Mo. App., 1945).

⁴² “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁴³ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

⁴⁴ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

The first issue for determination is whether GBE is an “electrical corporation” and a “public utility.” The Commission finds that it is not. GBE has professed itself to be a merchant transmission provider. It is offering a participant-funded project. Further, it is not offering its service to the general public indiscriminately, and it is not offering its services at regular rates. Rather, it has negotiated a special confidential contract with MJMEUC. It also proposes to continue to negotiate special contracts under authority of an order of the Federal Energy Regulatory Commission in Docket No. ER14-409. These facts are undisputed. Finally, this Commission is persuaded the proposed Project is not a “necessary and important link” in the distribution of electricity and qualifies as a public utility. The Project is not needed for grid reliability because GBE did not submit the Project to the regional planning process of an RTO, has not identified any existing deficiency or inadequacy in the AC grid that the Project addresses, and has not shown that the project is the best or least cost way to achieve more reliability. Rather, it is offering its facilities to select groups and organizations of bidders rather than to the system as a whole. For these many reasons, GBE is not an electrical corporation or a public utility because it is not offering its facilities as a public service.

The second issue for determination is whether GBE has obtained corporate authority it needs to fulfill its proposed Project. On this issue, the Commission is bound by the Supreme Court’s decision in the *Harline* case.

The certificate of convenience and necessity granted no new powers. It simply permitted the company to exercise the rights and privileges already conferred upon it by state charter and municipal consent. *State ex inf. Shartel ex rel. City of Sikeston v. Missouri Utilities Co.*, 331 Mo. 337, 53 S.W.2d 394, 89 A.L.R. 607. The certificate was a license or sanction, prerequisite to the use of existing corporate privileges.⁴⁵

⁴⁵ *State ex rel. Harline v. Public Service Commission of Mo.*, 343 S.W.2d 177, 181 (Mo. App., 1960).

Section 229.100, RSMo, requires assent of the county commission before a company may erect poles for the suspension of electric light or power wires under or across the public roads or highways of that county. The evidence is clear that GBE does not have all of the county assents required by section 229.100. Since GBE does not have the corporate authority to fulfill its proposed Project, the Commission cannot approve the application of GBE.

The third issue to be determined by the Commission is whether the evidence establishes that the high-voltage direct current transmission line and converter station for which GBE is seeking a certificate of convenience and necessity are necessary and convenient for the public service. When deciding of whether an applicant or project is convenient and necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant's proposal must be economically feasible; and
- e) The service must promote the public interest. ⁷⁹

It is important to note that these factors have been developed and implemented by the Commission itself, not by the legislature or the courts, so the Commission is not bound to strictly follow past decisions where it is reasonable to deviate from those standards if it stays within the constraints set down by law. It is also important to note that this case does not fit well within the typical analysis, since, as the applicant has made clear, this is a participant-funded project and there are no ratepayers for the Commission to protect.

With regard to GBE's qualifications and financial ability to provide the service, GBE has provided competent and substantial evidence to support its claim. No party seriously disputed these two factors, so the Commission concludes that GBE has met its burden of proof demonstrating that GBE is qualified and has the financial ability to provide the service described in its application for a certificate of convenience and necessity.

Need for the Project

GBE asserts that its Project is necessary for service that it has contracted for with MJMEUC. Both GBE and MJMEUC contend that the TSA is a valuable contract. It provides MJMEUC with an attractive price for the supply of power in competition to other alternatives via the existing transmission system.

However, this evidence does not support a showing that the Project is needed. It is actually counter to a showing of need. An artificially low service price is an indication of special dealing. In a free market, there is nothing wrong with such dealings. But in a regulated structure, predicated on just and reasonable rates that are non-discriminatory, the proposition is counter to the whole purpose of the regulation. GBE is not showing need; it is showing a special deal. Simple economic principles would suggest that there is a need when the market is willing to pay higher prices for a service, rather than when there is ability to negotiate lower prices. The TSA is not an indication of need in this case.

GBE asserts that its Project is needed for Missouri investor-owned utilities to meet the renewable energy standards ("RES") of Sections 393.1020 and 1030, RSMo. This law requires that those utilities obtain 15% of their electricity from renewable resources by 2021. However, the evidence showed that the Project is not needed for Missouri investor-owned utilities to meet the requirements of the RES. The Empire District Electric Company, Kansas City Power & Light Company, and KCP&L Greater Missouri

Operations Company have existing renewable energy capacity and new contracts that are projected to supply enough RECs to meet the RES requirements and have excess RECs to sell. In addition, Ameren Missouri has refused to indicate they have a need for the Project. Their integrated resource plan indicates they are pursuing other alternatives. All the investor-owned electric utilities in Missouri have the ability to meet the 2021 RES requirements without purchasing renewable energy transported over the Project.

There is no evidence that the Project is needed for AC grid reliability because GBE did not submit the Project to the regional planning process, has not identified any existing deficiency or inadequacy in the AC grid that the project addresses, and has not shown that the Project is the best or least cost way to achieve more reliability. Although GBE elected not to submit the Project to the MISO regional transmission process, MISO has an effective planning process to enable states in the MISO footprint, which includes portions of Missouri, to meet RES requirements using renewable wind resources. The Commission concludes that GBE has failed to meet its burden of proof to demonstrate that the service it proposes in its application for a certificate of convenience and necessity is needed in Missouri.

Economic Feasibility of the Project

GBE has not presented adequate evidence to show that the Project is economically feasible. Staff made credible criticisms of the GBE studies and pointed out the large amount of important information that is not known about the impact of the Project on Missouri. Interconnection studies with SPP, MISO and PJM have not been completed or are inconsistent with the Project's current design. In addition, all cost estimates are preliminary and there is a substantial risk that the costs may escalate.

Show Me Witness Justis presented credible evidence that load serving entities, including MJMEUC, would have lower-cost alternatives than the Project for meeting their need for capacity and energy. GBE's reliance on its "first mover" rate is misplaced. The Commission must consider GBE's "normal rate" when considering the economic feasibility of this project. GBE failed to perform adequate studies and present sufficient evidence on this "normal rate" feasibility, which the Commission would need to properly evaluate economic feasibility of the Project. Mr. Justis' analysis showed the "normal rate" to be very risky to the Project's economic feasibility. The Project is not the least-cost alternative for meeting Missouri's future needs for either energy and capacity or renewable energy. The Commission concludes that GBE has failed to meet its burden of proof that the service described in its application for a certificate of convenience and necessity is economically feasible.

Public Interest

Public policy must be found in a constitutional provision or a statute. The public interest impact is a matter of policy to be evaluated by the Commission. The Commission does not determine what the public interest is, but it must assess the application's impact on the public interest. It is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served.⁴⁶ In making such a determination, the total interests of the public must be assessed. The Commission's primary role is to avoid damage to existing investments and rights. The Commission's "public interest" focus necessarily must include the interests of both the

⁴⁶ *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 48 S.W.2d 593, 597, 598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

ratepaying public and the investing public, but, in this case, its primary focus is on the parties left out of the negotiations. The applicant's interest in its business opportunity must give way to the public's interest.⁴⁷

The *Tartan* case stated that the public interest determination "is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, and in a typical case, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest."⁴⁸ But this is anything but a typical case. GBE is not a typical monopoly utility supplier offering its services to the public indiscriminately. And it is not offering its services at regular rates. Since the Commission has concluded that GBE has not met two of the *Tartan* factors, by that standard GBE cannot show that the Project promotes the public interest. As a result, the Commission will consider further some of the other specific public interest aspects of the Project.

Of necessity, the Commission must consider the harm that would be done to the public, primarily those in the public not involved in the transaction. In this case, the public interests the Commission must consider are the property rights of Missouri landowners, the existing utility investment, and the commercial risks arising from an unregulated merchant transmission provider. GBE, MJMEUC, and Infinity Wind Power all had representatives at the negotiating table to protect their interests. The Missouri landowners ultimately had no say in the transaction as did the three parties to the

⁴⁷ *State ex rel. Missouri Pac. Freight Transport Co. v. Public Service Commission*, 295 S.W.2d 128 (Mo., 1956)

⁴⁸ *In re Tartan Energy*, 3 Mo.P.S.C. 3d at 189.

transaction. It should also not go without saying that the Missouri landowners have the priority rights to their land as recognized in the Missouri Constitution and statute.

The Commission acknowledges the substantial opposition to the Project expressed by business owners, farmers, and individual landowners across whose properties the Project is proposed to cross. The volume of public comments received in this case demonstrates the level of involvement of individuals who may be affected by this Project. Additionally, several people testified sincerely about their concerns relating to the Project. Those concerns were conveyed by farmers who could experience problems related to soil compaction, interference with irrigation equipment, aerial applications to crops and pastures and difficulty in moving large equipment around the towers proposed as part of the Project. For one landowner who owns a bed and breakfast, the view of that business would be marred for any guests staying at the bed and breakfast.

The Project will likewise diminish the value of the existing transmission grid. The Missouri Public Service Commission Law is predicated on well managed regulation constraining the waste of unregulated competition. This Commission has also found that integration of transmission facilities into a well-regulated RTO is in the public interest to check the abuse of market power inherently present in the marketing and sale of transmission services. GBE has not and does not propose to involve the RTO in the offer and sale of transmission services on the Project. The application weighs against this considerable public interest.

Against these interests, the Commission weighs the interests of GBE, MJMEUC and the state. MJMEUC claims that they have an interest in the low-cost service provided by the Project. If MJMEUC actually claimed that it could not obtain service but for the

Project, this case might be different. However, MJMJEUC's integrated resource plan, submitted to this Commission as Exhibit 406, clearly shows that MJMEUC can obtain service for its members without the Project.

GBE claims that it will bring tax revenues and economic development to the state through its investment. The Commission, however, must remain mindful that the interest it is required to protect is the public interest and not the state's interest. Further, the Commission must protect the economic development that has preceded this case. The public interest is not advanced if the state diminishes the value of valid economic investment in the state after the investment has been made.

Finally, GBE claims that its landowner protections make the Project in the public interest. The Commission finds that while the landowner protections are helpful, they do not advance the Project as being supportive of the public interest. The only help to minimize the harm to the public interest caused by the Project. For these reasons, the Commission finds that the Project is not in the public interest.

Respectfully submitted,

By: /s/ David C. Linton

David C. Linton, #32198
314 Romaine Spring View
Fenton, MO 63026
Telephone: 314-341-5769
Email: jdinton@reagan.com

Attorney for Show Me Concerned
Landowners

Filed: April 25, 2017

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 25th day of April, 2017.

/s/ David C. Linton