

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Grain Belt)
Express LLC for an Amendment to its Certificate)
of Convenience and Necessity Authorizing it to)
Construct, Own, Operate, Control, Manage, and) File No. EA-2023-0017
Maintain a High Voltage, Direct Current)
Transmission Line and Associated Converter)
Station)

**RESPONSE TO PETITIONS TO INTERVENE OF THE MISSOURI FARM BUREAU
FEDERATION, MISSOURI CATTLEMAN’S ASSOCIATION, MISSOURI PORK
ASSOCIATION, MISSOURI CORN GROWERS ASSOCIATION, AND MISSOURI
SOYBEAN ASSOCIATION**

Pursuant to the September 1, 2022 Order Directing Notice, Setting Intervention Deadline, Setting Time for Responses, and Directing Filing and 20 CSR 4240-2.080, Grain Belt Express LLC (“Grain Belt Express”) hereby files this Response to the Petitions to Intervene filed by the Missouri Farm Bureau Federation, the Missouri Cattleman’s Association, the Missouri Pork Association, the Missouri Corn Growers Association, and the Missouri Soybean Association (collectively, the “Associations”):

I. Background

1. On August 24, 2022, Grain Belt Express filed its Application to Amend its Existing Certificate of Public Convenience and Necessity (“Application”) to construct, install, own, operate, maintain, and otherwise control and manage an approximately 800-mile, overhead, multi-terminal ±600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities including converter stations and alternating current (“AC”) connector lines (the “Project”).

2. On September 1, 2022, the Missouri Public Service Commission (“Commission”) issued an Order Directing Notice, Setting Intervention Deadline, Setting Time for Responses, and Directing Filing.

3. On September 29, 2022, petitions to intervene were filed by the Associations. The petitions to intervene were filed by the same counsel and are nearly identical in substance. Accordingly, Grain Belt Express files this response to all five prospective intervenors collectively.

II. Argument

4. 20 CSR 4240-2.075(3) provides the standard for intervention and states that the Commission may grant a motion to intervene or add new members if: (A) the proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or (B) granting the proposed intervention would serve the public interest.

5. As the basis for their intervention, the Associations state that “[the Association] has long defended property owners and property rights involving takings of farms or ranches under the eminent domain doctrine” and allege that “[the Association’s] position as protector of property rights for farmers and ranchers are different than the general public interest and may be adversely affected by a final order in Grain Belt’s favor.”¹

A. The Associations Claim No Interest That Differs From The General Public

6. The Associations demonstrate no interest in this proceeding that differs from the general public and therefore do not meet the standard for intervention. The Associations’ claim that they have long defended property owners and property rights against eminent domain

¹ See Petitions to Intervene filed by the Missouri Farm Bureau Federation, the Missouri Cattleman’s Association, the Missouri Pork Association, the Missouri Corn Growers Association, and the Missouri Soybean Association at ¶¶ 4-5.

proceedings has no bearing on Grain Belt Express' application to amend its existing certificate of public convenience and necessity. Further, the Associations make no claim that any members of any of the five associations possess property along either the HVDC portion of the route of the Project or the Tiger Connector that would potentially be implicated by any Commission Order in this case.

7. The Commission has previously stated that its "chief concern in considering applications to intervene has always been that the intervention applicant have an articulable interest in the subject matter that is different in some way from that of the general public. The reason is that the general public's interest is represented by both the Commission's Staff and by the Public Counsel."² Similarly, the Missouri Supreme Court has declared that the interest necessary to authorize intervention in Commission proceedings should be that of a party who brings a complaint, or of a customer, a competitor, or a representative of locally affected persons. It may also be a party whose property rights could be affected."³

8. While the Associations' self-proclaimed role as the defender of Missouri property rights may be a laudable goal, in the absence of either an interest that differs from the general public, or a claim that it or its members may be affected by a Commission Order in this case, it is an insufficient basis for intervention.

² *In re Union Elec. Co.*, No. EA-2005-0180, Order Granting Intervention (Jan. 25, 2005), *citing State ex rel. Dyer v. PSC*, 341 S.W.2d 795, 796-797 (Mo. 1960) and *Smith v. PSC*, 336 S.W.2d 491, 494 (Mo. 1960). *See Staff v. Cass County Tel. Co.*, No. TC-2005-0357, Order Denying Application to Intervene But Inviting the State of Missouri to File As an Amicus Curiae (Feb. 9, 2006) (intervention denied because the State did not have an interest that is different than that of the general public); *In re CenturyTel Solutions, LLC*, No. LA-2004-0105, Order Denying Intervention at 3-4 (Dec. 18, 2003) (intervention denied because applicant did not have an interest different from that of the general public and because Staff and Public Counsel are able to protect applicant's interests).

³ *State ex rel. Consumers Pub. Serv. Co. v. PSC*, 180 S.W. 2d 40, 46-47 (Mo. 1944) (en banc).

II. The Commission Lacks Jurisdiction Over Eminent Domain

9. The Commission lacks the authority and jurisdiction to decide matters regarding eminent domain. “As a creature of statute, the Commission only has the power granted to it by the Legislature and may only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable implication.”⁴ “Neither convenience, expediency or necessity are proper matters for consideration in the determination of whether or not an act of the Commission is authorized by statute.”⁵ “If a power is not granted to the Commission by Missouri statute, then the Commission does not have that power.”⁶ During the last legislative session, the Missouri General Assembly considered and adopted numerous reforms to Missouri eminent domain law, which resulted in numerous benefits accruing to Missouri landowners.⁷ Notably, in considering reforms to eminent domain law, the General Assembly did not expand upon the Commission’s jurisdiction.

10. As a result, even if the Associations had asserted that multiple members had property interests along the route of the Project, whether any of those interests may at some point in the future be the subject of eminent domain proceedings, should voluntary negotiations fail, is not a subject within the Commission’s jurisdiction.

11. The Commission has recognized that it has no express statutory authority or jurisdiction to grant a public utility eminent domain.⁸ Section 523.262 RSMo. governs eminent domain for public utilities, and states that a private utility company, public utility or other utility

⁴ *Mo. Pub. Serv. Comm’n v. Consol. Pub. Water Supply Dist. C-1*, 474 S.W.3d 643, 649 (Mo. App. W.D. 2015), citing *Evans v. Empire Dist. Elec. Co.*, 346 S.W.3d 313, 318 (Mo.App.W.D.2011).

⁵ *Id.* citing *City of O’Fallon v. Union Elec. Co.*, 462 S.W.3d 438, 442 (Mo.App.W.D.2015).

⁶ *Id.*

⁷ See House Bill No. 2005, 101st General Assembly, Second Regular Session 2022.

⁸ Report and Order, File No. EC-2021-0059, at p. 14 (Aug. 4, 2021).

corporation shall have the power of eminent domain as may be granted pursuant to the provisions of other sections of the revised statutes of Missouri.

12. Grain Belt Express currently possesses a certificate of convenience and necessity (“CCN”) by virtue of the Commission’s April 19, 2019 Report and Order on Remand in File No. EA-2016-0358. As with all public utility projects, a CCN from the Commission confers upon the certificate holder the authority to use eminent domain, if necessary, for the purpose of constructing, operating and maintaining the Project. Accordingly, Grain Belt Express currently has all authorities conferred upon holders of a CCN and therefore any public policy arguments the Associations may make against eminent domain in general are merely political performance.

13. In evaluating Grain Belt Express’ Application to Amend its existing CCN, the Commission will apply five criteria it utilizes to evaluate CCN applications, known as the Tartan Factors: (1) there must be a need for the service the applicant proposes to provide; (2) the proposed service must be in the public interest; (3) the applicant’s proposal must be economically feasible; (4) the applicant must have the financial ability to provide the service; and (5) the applicant must be qualified to provide the proposed service.⁹ Notably absent from these factors are public policy arguments regarding eminent domain. Such public policy concerns are irrelevant to the five factors that the Commission will apply in this case. The Missouri General Assembly has already determined the applicability and contours of eminent domain, and individual eminent domain proceedings, where necessary, are handled by the Missouri court system, not the Commission. Moreover, questions pertaining to property value and compensation will be resolved by the circuit courts in condemnation proceedings specific to individual landowners. In this sense, the

⁹ *In re Tartan Energy Co.*, No. GA-94-127, Order Granting Certificate of Convenience and Necessity (Sep. 16, 1994).

Associations are both too late and too early because: (1) Grain Belt Express already possesses all authorities conferred by virtue of its CCN, so any arguments the Association may raise against eminent domain are moot; and (2) any future potential condemnation proceedings involving a member of the Associations are neither ripe for consideration nor a matter within the Commission's power to adjudicate.

WHEREFORE, Grain Belt Express respectfully requests the Commission deny the Associations Petitions to Intervene and take such other actions as the Commission deems necessary.

Respectfully submitted,

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ATTORNEYS FOR GRAIN BELT EXPRESS LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties listed on the official service list by email, this 11th day of October, 2022.

/s/ Anne E. Callenbach

Anne E. Callenbach