

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-2016-0358
Current Transmission Line and an Associated Converter)
Station Providing an interconnection on the Maywood-)
Montgomery 345 kV Transmission Line)

SHOW ME CONCERNED LANDOWNERS' COMMENTS SUPPORTING
A PROMPT REPORT AND ORDER DENYING A CERTIFICATE OF
CONVENIENCE AND NECESSITY

Comes now Show Me Concerned Landowners (“Show Me”), and requests the Missouri Public Service Commission (“Commission”) take up the Application (“Application”) of Grain Belt Express Clean Line LLC (“GBX”) for a Certificate of Convenience and Necessity (“CCN”) and promptly deny said application. In support thereof, Show Me states as follows:

1. On June 27, 2017, the Supreme Court of Missouri denied the applications for transfer of both the Commission and Ameren Transmission Company of Illinois (“ATXI”) in *Neighbors United Against Ameren’s Power Line v. PSC*, No. SC96427.

2. On June 29, 2017, GBX filed its *Request of Grain Belt Express and Motion for Waiver or Variance of Filing Requirements (“Request”)*. In its *Request*, GBX seeks the waiver of the Commission’s rules requiring the filing of the county assents prior to the issuance of a CCN and requests the approval of the Application and the issuance of the CCN in this case.

3. The Commission must now deny the Application in this case. It must do so for at least three reasons:

- a. The granting of a CCN in this case to a participant funded line is beyond the authority of the Commission. The record in this case makes it abundantly clear that this is a completely voluntary transaction amongst the parties. GBX has gone so far as to opine that the Commission's regulation is not necessary in this case. "There are, however, several cases where the company supplying electricity has not professed to sell to the public indiscriminately at regular rates, but has from the beginning adopted the policy of entering into special contracts upon its own terms; such companies are plainly engaged in private business."¹ This case is such a case. The Commission has no authority to regulate a private business. See Show Me's Initial Post Hearing Brief for a further detailed discussion for this and the following reasons.
- b. The Application in this case is detrimental to the public interest. The record in this case is clear that existing investments in this state would be harmed for the benefit of certain limited special economic interest, not the public interest. MJMEUC and GBX have argued repeatedly that they along with other special voluntary customers of GBX will obtain financial benefits from the project. In return, the investments of Missouri landowners, other electric utility companies, and the two RTO systems will be diminished in value. The Commission must protect the public and not grant special benefits to special parties.

The Commission has the responsibility of determining the public's need for common-carrier service sought and of considering a new,

¹ *State ex rel. M. O. Danciger & Co. v. Public Service Commission*, 275 Mo. 483, 205 S.W. 36; 18 A.L.R. 754 (Mo. 1918). 205 S.W. at 41.

enlarged, extended or additional, and duplication of service would adversely affect presently authorized carrier service with resultant deterioration of efficiency in adequately supplying the transportation needs of the public. In the determination of these matters, the rights of an applicant, with respect to the issuance of a certificate of convenience and necessity, are considered subservient to the public interest and convenience.²

The rights of GBX and MJMEUC in this case are subservient to the rights of the public.

- c. Missouri law is now quite clear that GBX must show that it has received all county assents prior to the issuance of a CCN. Since the record is now closed and GBX has failed to provide adequate evidence of all county assents, the Application must be denied.

4. The law is now clear that county assents must be obtained prior to the Commission granting a CCN for a line certificate. Such is the holding of the Western District Court of Appeals in the *Neighbors United* case.³ On May 24, 2017, the Commission had a discussion of the status of the *Neighbors United* case in response to some pressing inquiries from the public. During the discussion, the Chairman recognized the *Neighbors United* decision was still the subject of an application for transfer to the Missouri Supreme Court. He observed that the outcome of the application and/or subsequent proceedings may or may not have an impact on this case. All the Commissioners agreed with the assessment. The justification for the delay no longer exists since the Supreme Court has denied transfer. The Commission must now follow the law.

² *State ex rel. Missouri Pacific Freight Transport Company v. Public Service Commission*, 295 S.W.2d 128, 133 (Mo. 1956)

³ *Neighbors United Against Ameren's Power Line v. PSC*, No. WD79883 (Mar. 28, 2017), *applications for transfer filed*, No. SC96427 (Mo., May 16, 2017).

5. In its *Request*, GBX attempts to distinguish the *Neighbors United* case from this case. GBX would somehow have the Commission believe the *Neighbors United* case, i.e. the Mark Twain line application, involved an “area certificate.” This distinction is not credible. The Mark Twain line application was for a CCN for a 345-kV line. Ameren, in that case, did not seek authority to serve an area but to build a line. The *Neighbors United* case is identical to this case in that regard. Both were and are requests for line CCNs.

6. The *Neighbors United* court made no distinction between area CCNs and line CCNs. Its holding applies to all CCNs. The logic is simple. Without distinguishing between a “line” certificate and an “area” certificate, the Court declares the following:

“Section 229.100 prohibits public utilities from erecting power lines in a county without first obtaining the approval of the county commission.”

“Section 393.170.2 specifically states that the applicant for a CCN shall file evidence of local government consent before the PSC issues a CCN.”

“By statute and by rule, the PSC is authorized to issue a CCN only after the applicant has submitted evidence satisfactory to the PSC that the consent or franchise has been secured by the public utility.”⁴

Evidence that the applicant has received the county assents is a prerequisite to the issuance of any CCN.

⁴ *Neighbors United*, at 6. The Court’s lack of a distinction in this regard makes perfect sense. The so called “line” certificate requires the Commission’s “permission and approval” in subsection 1 of section 393.170. The so called “area” certificate also requires the Commission’s “permission and approval” in subsection 2. The words “such certificate” first appear in the second sentence of subsection 2, the critical sentence of the Court’s analysis. There is no rational reason to make the “such certificate” language describe the “permission and approval” of subsection 2 and not the “permission and approval” of subsection 1.

7. The GBX must now be denied. 4 CSR 240-2.140(2) states that, “The commission’s orders shall be in writing and shall be issued as soon as practicable after the record has been submitted for consideration.” There is now no longer any reason for delay. GBX has been given every accommodation to make its case and has failed.

8. There is no legal path for the Commission to grant GBX a CCN. The CCN is beyond the Commission’s authority to grant. The CCN is not in the public interest. And GBX has not obtained the required consent of the local governing authorities.

WHEREFORE, Show Me Concerned Landowners requests the Commission accept these comments and promptly issue its Report and Order denying the GBX Application in this case.

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

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail upon counsel for all parties this 5th day of July 2017.

/s/ David C. Linton