

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

**MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT'S
INITIAL POST-HEARING BRIEF**

COMES NOW the Missouri Department of Economic development (“DED”), by and through the undersigned counsel, and for its *Initial Post-Hearing Brief* in the above-styled matter, states:

DED supports the granting of a Certificate of Convenience of Necessity to Grain Belt Express Clean Line, LLC. The evidence in the record clearly supports the conclusion that the project presents a real economic opportunity for the State to meet demand today (as evidence from the position taken by the Missouri Joint Municipal Electric Utility Commission’s position). Equally, if not more important, the proposed project will allow the State to meet the future demands of corporate America in meeting renewable targets—a key attractor for new business to the state, and future retention of existing employers. A diversified source of electrical power will be key to ensuring the future economic health for

the State, and the Grain Belt project presents a rare opportunity to meet these goals on the back of private investment rather than being wholly shouldered by tax or rate payers.

However, despite this enthusiasm for the opportunities presented by the Grain Belt Project, DED's support is not without caution: the Commission should not, as a matter of prudence and discretion, dictate the construction of the line without buy-in from local governmental bodies. While DED questions the legal proposition that the lack of county commission assents is fatal to the application, it is clear that practical and prudential concerns require Grain Belt to secure such agreement at the local level. As such, provided that Grain Belt is able to secure such assents (along with other conditions set forth below), the Commission should allow this project to move forward.

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?

The Grain Belt project presents economic benefits for the State of Missouri, as indicated in DED's testimony. Issuance of a CCN by the Public Service Commission ("Commission") must nonetheless be conditioned on several factors, including a demonstration by Clean Line LLC ("Clean Line") that, prior to issuance of a CCN, it has met the requirements of 4 CSR 240-3.105(1)(D) and Section 229.100, RSMo. by filing the requisite county commission approvals. The Commission found in EA-2015-0146 that county commission approval was required under Section 229.100, RSMo. in order to

approve a CCN for a different transmission line in areas where the applicant held no prior CCN; the PSC conditioned its approval of that CCN on the provision of certified copies of county assents for each affected county. DED's support for the Grain Belt project is similarly conditioned on a demonstration by Clean Line that county commissions have approved construction of the project, as well as adequate assurance that Clean Line will comply with the Landowner and Missouri Agricultural Impact Mitigation Protocols developed following the previous CCN application.

While the legal underpinning of EA 2015-0146 has received an adverse ruling from the Court of Appeals for the Western District in the decision of *Neighbor's United v. P.S.C.* (WD79883), this should not affect the overall viability of this proceeding. As pointed out in the opposition briefing related to the Missouri Land Owner's motion to dismiss, the *Neighbor's United* decision was based on Sec. 393.170.2, RSMo., while this application was brought under Sec. 393.170.1, RSMo. Regardless, the decision is likely to be scrutinized further as the appellate process resolves itself in the Court of Appeals and possibly the Missouri Supreme Court. Given the fulsome record before the Commission, the underlying factual matters can be fully addressed—there is no need to start this proceeding all over again at square one.

As indicated below, DED also support most of the conditions proposed by the Commission Staff ("Staff").

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.?

In answering this question, DED notes that the CCN cases are governed by the Commission’s rules at 4 CSR 240-3.105, with the power to evaluate CCN applications found in statute at Section 393.170, RSMo. In evaluating CCN applications, the Commission has generally used a “five-factor test” which is alternatively known as the “Tartan 1 criteria.” The Commission ascertains whether a project encompassed by a CCN: 1) is necessary or convenient for serving the public; 2) can be undertaken by the applicant; 3) is financially feasible; 4) is economically feasible; and, 5) serves the public interest. DED’s testimony only addresses the first and fourth of these criteria.

Regarding the first of these criteria, the courts have held that, “[t]he term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable,’ but that an additional service would be an improvement justifying its cost.” State ex rel. Intercon Gas, Inc. v. Public Service Commission of Missouri, 848 S.W.2d 593, 597 (Mo. App. 1993); citing, State ex rel. Beaufort Transfer Co. v. Clark, 504 S.W.2d at 219. At the hearing, some parties appeared to take the tactic that because the Grain Belt project is not essential to the underlying viability of the grid, the application somehow falls short of fulfilling the “necessity” required under the law. This is not, of course, the law. Moreover, such stringent standards should not apply when the cost for the improvement is being shouldered by private investment rather than existing rate payers. Here, under the proper standard of necessity, the evidence clearly establishes that the Grain Belt project will provide tangible benefits to the State, local governments, and electrical consumers.

As DED witness Ms. Barbara A. Meisenheimer stated in her testimony, the Grain Belt project can meet the “necessity” standard by: supporting the diversification of the state energy portfolio (as discussed in the Missouri Comprehensive State Energy Plan); increasing access to wind resources for businesses, investor-owned utilities, and municipal utilities; improving air quality; and, supporting increased economic development.¹ Clean Line committed to work with local businesses including PAR Electric, ABB Inc., Hubbell Power Systems, Inc., and General Cable Industries, Inc. to supply products and services;² Clean Line witness Mr. Michael P. Skelly stated under oath that these companies will be used for construction of the project.³ This testimony clearly demonstrates that the economics of the project make sense for the State.

According to DED witness Mr. Alan E. Spell, the estimated benefits of the project include over 1,500 new jobs over the three year project construction period, 91 jobs in the project’s first year of operation, and 28 jobs in subsequent years of operation; new personal income in the amount of \$246 million during construction, \$17.9 million in the first year of operation, and \$2.6 million in subsequent years of operation; and, new gross domestic product in the amount of \$476 million during construction, \$9.1 million in the first year of operation, and \$4.2 million in subsequent years of operation.⁴

¹ Exhibit No. 525, pp. 6-9, ll. 1-16, 1-21, 1-17, and 1-21.

² *Id.*, p. 9, ll. 19-21.

³ Tr. Vol. 10, pp. 147-148, ll. 1-25 and 1-4. DED’s model of job creation and other economic benefits for the State are contingent on Grain Belt following through with these Missouri-based contracts.

⁴ Exhibit No. 526, pp. 2-3, ll. 21-22 and 1-23.

Although Mr. Spell testified at the evidentiary hearing that his modeling did not account for lost agricultural productivity,⁵ he also indicated that he would be willing to revise his economic modeling if presented with such data.⁶ At the time of filing this post-hearing brief, no party has approached DED or Mr. Spell with additional data related to agricultural or coal-based economic interests that will be displaced by the Grain Belt project. While there is no concrete data on these other economic interests, it is important to note that Mr. Spell also stated that he did not believe the economic detriments of the project would outweigh its economic benefits.⁷ Based on the evidence in the record, the only conclusion that Commission can reach is that the Grain Belt project will likely produce a significant economic boon to the State of Missouri.

DED agrees that Grain Belt project meets the first and fourth of the Tartan criteria. Staff and the Company settled on a number of conditions that will ensure that the project is feasible and adequately financed prior to construction of the line, meeting the second and third criteria.⁸ Obtaining county commission approval is critical to determining if the project will be in the public interest; as Ms. Meisenheimer stated in her pre-filed testimony, “County commission input into this process is important because county commissions are well positioned to evaluate the balance of costs and benefits of such a project to their constituents and local communities.”⁹ Therefore, once Clean Line files the assents of county commissions in the counties the Grain Belt project will traverse, DED

⁵ Tr. Vol. 16, pp. 1251-1252, ll. 16-25 and 1-25.

⁶ *Id.*, pp. 1283-1284, ll. 7-25 and 1-4.

⁷ *Id.*, pp. 1256-1257, ll. 14-25 and 1-12.

⁸ Exhibit No. 206.

⁹ Exhibit No. 525, p. 10, ll. 20-22.

recommends that the Commission issue a CCN for the project, subject to the conditions below.

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

DED recommends granting a CCN for the Grain Belt project, subject to the following conditions:

- A. As required by 4 CSR 240-3.105(1)(D) and Section 229.100, RSMo., Clean Line must provide the Commission with the requisite approvals from county commissions *prior to approval* of a CCN.
- B. Clean Line must also agree to comply with the Landowner Protocol and Missouri Agricultural Impact Mitigation Protocol, as well as applicable laws of the state which ensure fair treatment of landowners and mitigation of agricultural impacts.
- C. The Commission should condition approval on the conditions agreed to by Clean Line and Staff,¹⁰ with the exception that Clean Line should *obtain consent* from landowners (or provide other recourse) for any re-siting of the line.¹¹
- D. The Commission should require Clean Line to begin paying into a decommissioning fund upon commencing commercial operation.¹²

¹⁰ Exhibit No. 206.

¹¹ Tr. Vol. 16, pp. 1226-1229, ll. 23-25, 1-25, 1-25, and 1-19.

¹² Exhibit No. 201, p. 44.

E. The Commission should order Clean Line to construct the proposed converter station and deliver at least 500 MW of wind to the converter station as a condition of CCN approval. Conditioning the CCN on these requirements would support the concept contemplated in the March 28, 2017 *Order Directing Filing Regarding Initial Briefs*, and would solidify the project's direct benefits of diversifying Missouri energy resources with access to renewable energy.

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)?

DED takes no position on this issue at this time, but reserves the right to take a position in its reply brief.

WHEREFORE, the Missouri Department of Economic Development respectfully files its *Initial Post-Hearing Brief*.

Respectfully submitted,

/s/ Brian Bear

Brian Bear, (Mo. Bar No. 61957)

General Counsel

Missouri Department of Economic Development

P.O. Box 1157

Jefferson City, MO 65102

Phone: 573-526-2423

E: brian.bear@ded.mo.gov

**Attorney for Missouri Department of
Economic Development**

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served electronically on all counsel of record this 10th day of April, 2017.

/s/ Brian Bear _____
Brian Bear