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

INITIAL BRIEF OF SIERRA CLUB, NRDC AND RENEW MISSOURI

In this unprecedented case, Grain Belt Express (GBE) seeks a certificate of convenience and necessity to build a merchant transmission line that will transit eight Missouri counties en route to a rendezvous with the PJM Interconnection. As an HVDC line it will interact with the AC grid only through converter stations, of which only one, in Ralls County, would be located between the termini of the line. This enables the GBE to deliver wind energy from southwestern Kansas, where wind capacity factors are high and population low, to load centers to the east.

Missouri utilities cling to coal in an era when cleaner, lower-cost options like energy efficiency, wind and solar resources have taken the lead. Any one project that would redress this anachronism is only a modest step, but none the less important and beneficial.

1. The Commission may lawfully issue to Grain Belt Express Clean Line LLC the certificate of convenience and necessity ("CCN") for the high-voltage direct current transmission line and converter station without waiting for county consents.

The HVDC line and converter station are electric plant for the provision of

electrical service to the citizens of Missouri, subject to § 393.170.1, RSMo:

> No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system without first having obtained the permission and approval of the commission.

GBE filed its application under this provision (Application, p. 1).

After the hearing in this case concluded, the Court of Appeals Western District handed down a decision in *Neighbors United against Ameren's Power Line v. PSC and Ameren Transmission Co. of Illinois (ATXI),* W.D.79883 (slip op. March 28, 2017). The Court of Appeals construed § 393.170.2:

> No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually exercised, or the exercise of which shall have been suspended for more than one year, without first having obtained the permission and approval of the commission. Before such certificate shall be issued a certified copy of the charter of such corporation shall be filed in the office of the commission, together with a verified statement of the president and secretary of the corporation, showing that it has received the required consent of the proper municipal authorities.

The Court of Appeals held that the Commission could not issue a CCN before the necessary franchise or consent was received; *i.e.* it could not issue the CCN on condition that a consent be received later (slip op. pp. 6–8). The Court did not distinguish between the two types of CCN comprised in 393.170.1–.2, presumably because ATXI itself did

not specify which one in its application,[1] but the distinction is well established.

A "line certificate" (misleadingly named) is given for the pre-construction approval of any electric plant, including transmission lines, under § 393.170.1 and 4 CSR 240-3.105(1) (B) ("If the application is for electrical transmission lines, gas transmission lines or electrical production facilities…"). *State ex rel. Cass County v. PSC*, 259 S.W.3d 544, 549 (Mo.App. W.D. 2008). A line certificate carries no obligation of general service to the public. *State ex rel. Union Electric v. PSC,* 770 S.W.2d 283, 285 (Mo.App. W.D. 1989). There is no requirement of county consents in 393.170.1, although they must still be obtained under the independent authority of § 229.100.

An "area certificate" is issued for the exercise of a franchise[2] under 393.170.2 and 4 CSR 240-3.105(1)(A)("If the application is for a service area"). *Cass County, loc cit.* An area certificate, as the Court said in *Neighbors United,* must be backed by proof of county consent by the express terms of 393.170.2. A franchised utility does not need a certificate to extend the transmission lines within its territory, *State ex rel. Harline v. PSC,* 343 S.W.2d 177, 182–3 (Mo.App. W.D. 1960); but it does need a 393.170.1 line certificate for a new power plant. *Stopaquila.org v. Aquila,* 180 S.W.3d 24, 34 (Mo.App. WD 2005); *Cass County, supra,* fn. 6.

A county has a strong interest in the siting of installations by its certificated utility, absent state preemption. *Stopaquila.org,* 180 S.W.3d at 30. Transmission lines are treated differently, however. No line certificate is needed to extend a line if the utility already

[1] File No. EA-2015-0146, Application, p. 1.
[2] "Franchise" generally refers to the obligation to serve the public in the county, not the consent required by § 229.100, RSMo. *State ex rel. Harline v. PSC,* 343 S.W.2d 177, 181 (Mo.App. W.D. 1960).

has an area certificate. A new entrant like GBE needs a line certificate, not an area certificate, from the Commission but, under 393.170.1, county consent is not a condition for obtaining such a CCN.

There is testimony that some county commissions withdrew their consents under § 229.100, RSMo, because they believed they had to wait until the Commission issued the CCN.[3] Their position is understandable in light of § 393.170.1. There is no legal reason why either one should necessarily precede the other. GBE needs other approvals as well, such as permits from the U.S. Army Corps of Engineers and Fish and Wildlife Service.[4] No law says the Commission goes last.

2. The HVDC transmission line and converter station are "necessary or convenient for the public service" within the meaning of that phrase in section 393.170, RSMo.

There are no specific statutory criteria for the issuance of a CCN; the overarching concern is the public interest. *Application of KCP&L-GMO for Approval of Solar Facilities,* WD79550, 2016 WL 7650615, p. 4 (Mo.App. W.D. Dec. 20, 2016). The Commission's *Tartan* criteria incorporate the public interest with four additional, more specific requirements, all of which are satisfied by GBE.

Financial ability and qualifications. The Commission found after the first hearing that GBE has the financial ability and qualifications.[5] There has been no change

[3] Lawlor, T. vol. 10, p. 297:18–25; vol. 12, p. 407:14–18.
[4] Berry, T. vol. 14, p. 885:25
[5] EA-2014-0207, Report and Order, p. 21.

in circumstances except the favorable one that GBE has acquired an additional investor.[6]

Economic feasibility. This is based on the desirability of GBE's price of $0.02 per kWh in the huge PJM market, where prices are $10/MWh higher than what GBE is offering in Missouri (after MJMEUC's first-mover discount).[7] Mr. Berry estimated that GBE could build the project by selling half of its 4000 MW.[8]

The purpose is to reach PJM, but that does not mean Missouri should reject the offer of 500 MW if there is a need to fill and public benefit to be realized.

Need. "Necessity" as used in § 393.170.3, RSMo, does not mean essential or absolutely indispensable, but that the additional service would be an improvement justifying its cost. *State ex rel. Intercon Gas v. PSC,* 848 S.W.2d 593, 597 (Mo.App. WD 1993).

Kansas' outstanding wind resource makes GBE the least-cost option in Missouri. Kansas wind capacity factors are approaching 55%, compared to 40% at best in Missouri.[9] The project is participant-funded, so the expense will not fall on ratepayers, in contrast to expanding the AC grid in MISO.[10] For the sake of just and reasonable rates and in the name of prudence, Missouri utilities should welcome this energy.

GBE offered MJMEUC a low first-mover rate, which MJMEUC accepted. At the time of hearing MJMEUC had subscribers for 100 MW out of a possible 200, with Columbia likely to take 35 MW and an expectation that the full 200 would be

[6] Exhibit 104, Berry direct, p. 12, lines 5–12.
[7] Berry, T. vol. 14, p. 857:1–6; pp. 963:23–964:5.
[8] T. vol. 14, p. 938:11–7.
[9] Goggin, T. vol. 16, p. 1141:17–21; pp. 1150:21–1151:1; pp. 1172:7–1173:12.
[10] Kelly, T. vol. 12, p. 535:25–6; Berry, T. vol. 14, pp. 932–3.

subscribed.[11] MJMEUC utilities would save $10–11 million annually.[12] MJMEUC needs to replace 100 MW of energy and capacity for MoPEP after 2021.[13]

Wal-Mart and other major companies have their own goals as high as 100% for renewable energy.[14] This need creates a benefit for Missouri if greater availability of renewable energy leads these companies to locate facilities in Missouri. The city of Columbia has a need to meet its own renewable energy standard, and MoPEP customers express a desire for more renewable energy.[15] Institutions including universities and the military want more renewable energy.[16]

The public interest. GBE plans to enlist Missouri companies as suppliers.[17] Jobs, increased GDP and tax revenue are among the economic benefits.[18] Least-cost energy is a clear public and ratepayer benefit.

Wind typically displaces fossil-fueled generation; coal generation is higher in cost.[19] This displacement reduces criteria air pollutants, hazardous air pollutants like mercury, and greenhouse gases like CO2.[20] Greenhouse gases do not respect geographic boundaries, so Missourians will benefit directly even if most of the CO2 reductions occur in PJM. Wind conserves the copious amounts of water used by conventional power

[11] Kincheloe, T. vol. 16, p. 981:1–14, pp. 996:24–997:2.
[12] Kincheloe, T. vol. 16, p. 1002:15–20.
[13] Exh. 476, Grotzinger rebuttal, p. 3, lines 2–7.
[14] Exh. 900, Chriss rebuttal, pp. 3, 7–8; Exh. 104, Berry direct, 35:8–36:5; Exh. 525, Meisenheimer rebuttal, p. 8:6–17.
[15] Exh. 476, Grotzinger rebuttal, p. 9, lines 197–23; Exh. 475, Kincheloe rebuttal, p. 5:7–13.
[16] Exh. 104, Berry direct, p. 35:11–12.
[17] Skelly, T. vol. 10, p. 147:3–9.
[18] Exh. 525, Meisenheimer rebuttal, p. 9:10–21; Exh. 900, Chriss rebuttal, p. 8:7–13; Exh. 201, Staff Rebuttal Report, pp. 41–2 (despite Staff's pretzel logic in calling these benefits costs).
[19] Copeland, T. vol. 14, p. 759:1–7, p. 768:11–769:7.
[20] Exh. 525, Meisenheimer rebuttal, p. 9:1–8; Exh. 675, Goggin rebuttal, p. 28, lines 580–90.

plants, to the benefit of agriculture.[21]

Given these benefits, the public interest is served by granting the CCN despite the opponents' concerns about eminent domain. GBE has pledged to avoid condemnation if at all possible. In its order from the 2015 Grain Belt docket, the Commission noted, "[d]etermining the public interest is a balancing process. This means that some of the public may suffer adverse consequences for the total public interest. Individual rights are subservient to the rights of the public." Report and Order, EA-2014-0207 p. 24. The landowners' objections are inevitable but are of secondary importance to the wider public interest. *State ex rel. Public Water Supply District v. PSC,* 600 S.W.2d 147, 156 (Mo.App. W.D. 1980). Eminent domain, like paying taxes, is necessary for the functioning of society.

MLA has raised issues of aesthetics. Aesthetics are in the eye of the beholder. As evidenced by comments received at public hearings, there are some who vehemently oppose the idea of looking out the window and seeing a transmission line, but others who may respect what the line represents. Opponents should consider the last time they drove to work or to the store, and how many telephone poles and power lines they passed, probably without noticing.

3. The conditions agreed by GBE and Staff should be incorporated in the CCN.

The Commission should apply the conditions in Exhibit 206 as agreed between GBE and Staff.

Some conditions that have been proposed are unreasonable. Decommissioning

[21] Exh. 675, Goggin rebuttal, pp. 27 line 568–28 line 578.

funds, for example, have never before been applied in a CCN case and are restricted to nuclear plants.[22] CCNs have not been conditioned on the execution of contracts for spare parts or other restoration equipment.[23] No condition should be imposed that would put GBE in the Catch-22[24] position of needing a CCN before the condition for the CCN can be fulfilled.

4. If the Commission grants the CCN, the Commission should 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).

Grain Belt seeks variances from certain reporting requirements in the Commission's rules (Application, pp. 29–30).

The reporting requirements of 4 CSR 240-3.145 (rate schedules) should be waived since Grain Belt Express will not be charging rates to Missouri customers, and agrees to file with the Commission the annual report it files with FERC (Application at 30).

The parties to this brief take no position on the applicability of 4 CSR 240-3.165 for filing an annual report.

We support a waiver from the requirements of 4 CSR 240-3.175 since a depreciation study is not necessary for purposes of the Commission.

We support a waiver from 4 CSR 240-3.190(1), (2) and (3)(A–D) because the information sought therein concerns generation outages, injuries and the like, and is not relevant to a transmission company.

[22] Beck, T. vol. 16, p. 1354:4–20.
[23] Lange, T. vo. 16, p 1328:10–22.
[24] Does anyone read that book anymore?

CONCLUSION

WHEREFORE Sierra Club, NRDC and Renew Missouri ask the Commission to approve the application of Grain Belt for a certificate of convenience and necessity with such reasonable conditions as are necessary.

/s/ Henry B. Robertson
Henry B. Robertson (Mo. Bar No. 29502)
Great Rivers Environmental Law Center
319 N. Fourth Street, Suite 800
St. Louis, Missouri 63102
(314) 231-4181
(314) 231-4184 (facsimile)
hrobertson@greatriverslaw.org

Attorney for Sierra Club and NRDC

/s/ Andrew J. Linhares
Andrew J. Linhares, # 63973
1200 Rogers St, Suite B
Columbia, MO 65201
T: (314) 471-9973
F: (314) 558-8450
Andrew@renewmo.org

Attorney for Renew Missouri

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was filed on EFIS and sent by email on this 10th day of April, 2017, to all counsel of record.

/s/ Henry B. Robertson
Henry B. Robertson